

1 individuals exhibiting such behavior; amending
2 s. 393.065, F.S., relating to application for
3 services and the determination of eligibility
4 for services; authorizing the agency to adopt
5 rules; amending s. 393.0651, F.S., relating to
6 support plans for families and individuals;
7 revising the age at which support plans are
8 developed for children; deleting a prohibition
9 against assessing certain fees; creating s.
10 393.0654, F.S.; specifying circumstances under
11 which an employee of the agency may own,
12 operate, or work in a private facility under
13 contract with the agency; amending s. 393.0655,
14 F.S.; revising the screening requirements for
15 direct service providers; providing a temporary
16 exemption from screening requirements for
17 certain providers; amending s. 393.0657, F.S.;
18 revising an exemption from certain requirements
19 for refingerprinting and rescreening; amending
20 s. 393.066, F.S.; revising certain requirements
21 for the services provided by the agency;
22 requiring agency approval for purchased
23 services; revising the agency's rulemaking
24 authority; amending s. 393.067, F.S.; revising
25 requirements governing the agency's licensure
26 procedures; specifying that a license from the
27 agency is not a property right; revising the
28 requirements for background screening of
29 applicants for licensure and managers,
30 supervisors, and staff members of service
31 providers; requiring that the agency adopt

1 rules governing the reporting of incidents;
2 deleting certain responsibilities of the Agency
3 for Health Care Administration with respect to
4 the development and review of emergency
5 management plans; amending s. 393.0673, F.S.;
6 deleting a requirement that certain fines be
7 deposited into the Resident Protection Trust
8 Fund; requiring that the Agency for Persons
9 with Disabilities adopt rules for evaluating
10 violations and determining the amount of fines;
11 amending s. 393.0674, F.S.; providing a penalty
12 for failure by a provider to comply with
13 background-screening requirements; amending s.
14 393.0675, F.S.; deleting certain obsolete
15 provisions requiring that a provider be of good
16 moral character; amending s. 393.0678, F.S.;
17 deleting provisions governing receivership
18 proceedings for an intermediate care facility
19 for the developmentally disabled; deleting a
20 requirement that a receiver is subject to the
21 Resident Protection Trust Fund and liable for
22 certain expenses and costs; amending s.
23 393.068, F.S.; requiring that the family care
24 program emphasize self-determination; revising
25 certain requirements for reimbursing a family
26 care program provider; amending s. 393.0695,
27 F.S., relating to in-home subsidies; requiring
28 that the Agency for Persons with Disabilities
29 adopt rules for such subsidies; amending s.
30 393.075, F.S., relating to liability coverage
31 for facilities licensed by the agency;

1 conforming terminology; amending s. 393.11,
2 F.S.; revising provisions governing the
3 involuntary admission of a person to
4 residential services; clarifying provisions
5 governing involuntary commitment; requiring
6 that a person's competency be determined under
7 ch. 916, F.S.; conforming terminology; amending
8 s. 393.122, F.S.; clarifying requirements
9 governing applications for continued
10 residential services; amending s. 393.125,
11 F.S., relating to administrative hearings;
12 prohibiting a service provider of an applicant
13 or client from acting as that applicant's or
14 client's authorized representative; amending s.
15 393.13, F.S., relating to the Bill of Rights of
16 Persons Who are Developmentally Disabled;
17 requiring the agency to adopt rules governing
18 the use of restraints; revising requirements
19 for client records; deleting certain
20 requirements governing local advocacy councils;
21 amending s. 393.135, F.S.; redefining the term
22 "sexual misconduct"; clarifying provisions
23 making such misconduct a second-degree felony;
24 amending s. 393.15, F.S.; establishing the
25 Community Resources Development Loan Program to
26 provide loans to foster homes, group homes, and
27 supported employment programs; providing
28 legislative intent; providing eligibility
29 requirements; providing authorized uses of loan
30 funds; requiring that the agency adopt rules
31 governing the loan program; providing

1 requirements for repaying loans; amending s.
2 393.17, F.S.; authorizing the agency to
3 establish certification programs for persons
4 providing services to clients; requiring that
5 the agency establish a certification program
6 for behavior analysts; requiring that the
7 program be reviewed and validated; creating s.
8 393.18, F.S.; providing for a comprehensive
9 transition education program for persons who
10 have severe or moderate maladaptive behaviors;
11 specifying the types of treatment and education
12 centers providing services under the program;
13 providing requirements for licensure; requiring
14 individual education plans for persons
15 receiving services; limiting the number of
16 persons who may receive services in such a
17 program; amending s. 393.501, F.S.; revising
18 the agency's rulemaking authority; providing
19 requirements for rules governing alternative
20 living centers and independent living education
21 centers; amending s. 397.405, F.S.; clarifying
22 an exemption from licensure provided to certain
23 facilities licensed under ch. 393, F.S.;
24 amending s. 400.419, F.S.; requiring that a
25 list of facilities subject to sanctions or
26 fines be disseminated to the Agency for Persons
27 with Disabilities; amending s. 400.960, F.S.;
28 revising definitions for purpose of part XI of
29 ch. 400, F.S., relating to nursing homes and
30 related facilities; amending s. 400.967, F.S.,
31 relating to rules and classification

1 deficiencies; conforming provisions to the
2 transfer of duties from the Department of
3 Children and Family Services to the Agency for
4 Persons with Disabilities; amending ss.
5 402.115, 402.17, 402.181, 402.22, and 402.33,
6 F.S.; including the Agency for Persons with
7 Disabilities within provisions governing the
8 sharing of information, claims for the care and
9 maintenance of facility residents, education
10 programs for students who reside in state
11 facilities, and fees for services; amending s.
12 408.036, F.S., relating to projects that are
13 exempt from obtaining a certificate of need;
14 conforming terminology; amending ss. 409.908
15 and 409.9127, F.S., relating to the Medicaid
16 program; conforming a cross-reference; deleting
17 obsolete provisions; amending ss. 411.224 and
18 411.232, F.S.; conforming provisions to the
19 transfer of duties from the Developmental
20 Disabilities Program Office within the
21 Department of Children and Family Services to
22 the Agency for Persons with Disabilities;
23 amending ss. 415.102, 415.1035, 415.1055, and
24 415.107, F.S.; conforming terminology;
25 including the Agency for Persons with
26 Disabilities within provisions providing
27 requirements that a facility inform residents
28 of certain rights, notification requirements
29 for administrative entities, and requirements
30 for maintaining the confidentiality of reports
31 and records; amending s. 419.001, F.S.,

1 relating to site selection of community
2 residential homes; revising definitions;
3 conforming terminology; amending s. 435.03,
4 F.S., relating to screening standards;
5 conforming terminology and a cross-reference;
6 amending ss. 944.602, 945.025, 947.185, 984.19,
7 984.225, 984.226, and 985.224, F.S., relating
8 to the Department of Corrections, the Parole
9 Commission, children in need of services, and
10 petitions alleging delinquency; conforming
11 provisions to the transfer of duties from the
12 Developmental Disabilities Program Office
13 within the Department of Children and Family
14 Services to the Agency for Persons with
15 Disabilities; amending s. 1003.58, F.S.;
16 including facilities operated by the Agency for
17 Persons with Disabilities within provisions
18 governing the residential care of students;
19 providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Paragraphs (a) and (h) of subsection (2) of
24 section 39.202, Florida Statutes, are amended to read:

25 39.202 Confidentiality of reports and records in cases
26 of child abuse or neglect.--

27 (2) Except as provided in subsection (4), access to
28 such records, excluding the name of the reporter which shall
29 be released only as provided in subsection (5), shall be
30 granted only to the following persons, officials, and
31 agencies:

1 (a) Employees, authorized agents, or contract
2 providers of the department, the Department of Health, the
3 Agency for Persons with Disabilities, or county agencies
4 responsible for carrying out:

- 5 1. Child or adult protective investigations;
- 6 2. Ongoing child or adult protective services;
- 7 3. Healthy Start services; or
- 8 4. Licensure or approval of adoptive homes, foster
9 homes, ~~or~~ child care facilities, facilities licensed under
10 chapter 393, or family day care homes or informal child care
11 providers who receive subsidized child care funding, or other
12 homes used to provide for the care and welfare of children.

13 5. Services for victims of domestic violence when
14 provided by certified domestic violence centers working at the
15 department's request as case consultants or with shared
16 clients.

17
18 Also, employees or agents of the Department of Juvenile
19 Justice responsible for the provision of services to children,
20 pursuant to chapters 984 and 985.

21 (h) Any appropriate official of the department or the
22 Agency for Persons with Disabilities who is responsible for:

23 1. Administration or supervision of the department's
24 program for the prevention, investigation, or treatment of
25 child abuse, abandonment, or neglect, or abuse, neglect, or
26 exploitation of a vulnerable adult, when carrying out his or
27 her official function;

28 2. Taking appropriate administrative action concerning
29 an employee of the department or the agency who is alleged to
30 have perpetrated child abuse, abandonment, or neglect, or
31 abuse, neglect, or exploitation of a vulnerable adult; or

1 3. Employing and continuing employment of personnel of
2 the department or the agency.

3 Section 2. Subsection (5) of section 39.407, Florida
4 Statutes, is amended to read:

5 39.407 Medical, psychiatric, and psychological
6 examination and treatment of child; physical or mental
7 examination of parent or person requesting custody of child.--

8 (5) A judge may order a child in an out-of-home
9 placement to be treated by a licensed health care professional
10 based on evidence that the child should receive treatment.
11 The judge may also order such child to receive mental health
12 ~~or developmental disabilities~~ services from a psychiatrist,
13 psychologist, or other appropriate service provider. Except
14 as provided in subsection (6), if it is necessary to place the
15 child in a residential facility for such services, the
16 procedures and criteria established in s. 394.467 ~~or chapter~~
17 ~~393~~ shall be used, ~~whichever is applicable~~. A child may be
18 provided ~~developmental disabilities or~~ mental health services
19 in emergency situations, pursuant to the procedures and
20 criteria contained in s. 394.463(1) ~~or chapter 393, whichever~~
21 ~~is applicable~~.

22 Section 3. Subsection (5) of section 383.14, Florida
23 Statutes, is amended to read:

24 383.14 Screening for metabolic disorders, other
25 hereditary and congenital disorders, and environmental risk
26 factors.--

27 (5) ADVISORY COUNCIL.--There is established a Genetics
28 and Newborn Screening Advisory Council made up of 15 members
29 appointed by the Secretary of Health. The council shall be
30 composed of two consumer members, three practicing
31 pediatricians, at least one of whom must be a pediatric

1 hematologist, one representative from each of the four medical
2 schools in the state, the Secretary of Health or his or her
3 designee, one representative from the Department of Health
4 representing Children's Medical Services, one representative
5 from the Florida Hospital Association, one individual with
6 experience in newborn screening programs, one individual
7 representing audiologists, and one representative from the
8 Agency for Persons with Disabilities ~~Developmental~~
9 ~~Disabilities Program Office of the Department of Children and~~
10 ~~Family Services~~. All appointments shall be for a term of 4
11 years. The chairperson of the council shall be elected from
12 the membership of the council and shall serve for a period of
13 2 years. The council shall meet at least semiannually or upon
14 the call of the chairperson. The council may establish ad hoc
15 or temporary technical advisory groups to assist the council
16 with specific topics which come before the council. Council
17 members shall serve without pay. Pursuant to the provisions of
18 s. 112.061, the council members are entitled to be reimbursed
19 for per diem and travel expenses. It is the purpose of the
20 council to advise the department about:

21 (a) Conditions for which testing should be included
22 under the screening program and the genetics program.

23 (b) Procedures for collection and transmission of
24 specimens and recording of results.

25 (c) Methods whereby screening programs and genetics
26 services for children now provided or proposed to be offered
27 in the state may be more effectively evaluated, coordinated,
28 and consolidated.

29 Section 4. Section 393.061, Florida Statutes, is
30 repealed.

31

1 Section 5. Section 393.062, Florida Statutes, is
2 amended to read:

3 393.062 Legislative findings and declaration of
4 intent.--The Legislature finds and declares that existing
5 state programs for the treatment of individuals with
6 developmental disabilities ~~who are developmentally disabled,~~
7 which often unnecessarily place clients in institutions, are
8 unreasonably costly, are ineffective in bringing the
9 individual client to his or her maximum potential, and are in
10 fact debilitating to many ~~a great majority of~~ clients. A
11 redirection in state treatment programs for individuals with
12 developmental disabilities ~~who are developmentally disabled~~ is
13 necessary if any significant amelioration of the problems
14 faced by such individuals is ever to take place. Such
15 redirection should place primary emphasis on programs that
16 ~~have the potential to~~ prevent or reduce the severity of
17 developmental disabilities. Further, the ~~Legislature declares~~
18 ~~that~~ greatest priority shall be given to the development and
19 implementation of community-based ~~residential placements,~~
20 services that, ~~and treatment programs for individuals who are~~
21 ~~developmentally disabled which~~ will enable ~~such~~ individuals
22 with developmental disabilities to achieve their greatest
23 potential for independent and productive living, ~~which will~~
24 enable them to live in their own homes or in residences
25 located in their own communities, and ~~which will~~ permit them
26 to be diverted or removed from unnecessary institutional
27 placements. This goal ~~The Legislature finds that the~~
28 ~~eligibility criteria for intermediate care facilities for the~~
29 ~~developmentally disabled which are specified in the Medicaid~~
30 ~~state plan in effect on the effective date of this act are~~
31 ~~essential to the system of residential services. The~~

1 ~~Legislature declares that the goal of this act, to improve the~~
2 ~~quality of life of all developmentally disabled persons by the~~
3 ~~development and implementation of community based residential~~
4 ~~placements, services, and treatment,~~ cannot be met without
5 ensuring the availability of community residential
6 opportunities ~~for developmentally disabled persons~~ in the
7 residential areas of this state. The Legislature, therefore,
8 declares that all persons with developmental disabilities who
9 live in licensed community homes shall have a family living
10 environment comparable to other Floridians. The Legislature
11 intends that such residences shall be considered and treated
12 as a functional equivalent of a family unit and not as an
13 institution, business, or boarding home. The Legislature
14 declares that, in developing community-based programs and
15 services for individuals with developmental disabilities ~~who~~
16 ~~are developmentally disabled~~, private businesses,
17 not-for-profit corporations, units of local government, and
18 other organizations capable of providing needed services to
19 clients in a cost-efficient manner shall be given preference
20 in lieu of operation of programs directly by state agencies.
21 Finally, it is the intent of the Legislature that all
22 caretakers unrelated to individuals with developmental
23 disabilities receiving care shall be of good moral character.

24 Section 6. Section 393.063, Florida Statutes, is
25 amended to read:

26 393.063 Definitions.--For the purposes of this
27 chapter, the term:

28 (1) "Agency" means the Agency for Persons with
29 Disabilities.

30 (2) "Autism" or "autistic disorder" means a disorder,
31 as defined in the current edition of the Diagnostic and

1 Statistical Manual of the American Psychiatric Association,
2 which causes pervasive impairment in social interaction,
3 communication, and range of interests and activities. While
4 these characteristics occur on a spectrum, the term refers
5 only to the most severe disorder on this spectrum as defined
6 in the Diagnostic and Statistical Manual. ~~means a pervasive,~~
7 ~~neurologically based developmental disability of extended~~
8 ~~duration which causes severe learning, communication, and~~
9 ~~behavior disorders with age of onset during infancy or~~
10 ~~childhood. Individuals with autism exhibit impairment in~~
11 ~~reciprocal social interaction, impairment in verbal and~~
12 ~~nonverbal communication and imaginative ability, and a~~
13 ~~markedly restricted repertoire of activities and interests.~~

14 (3) "Cerebral palsy" means a group of disabling
15 symptoms of extended duration which results from damage to the
16 developing brain that may occur before, during, or after birth
17 and that results in the loss or impairment of control over
18 voluntary muscles. For the purposes of this definition,
19 cerebral palsy does not include those symptoms or impairments
20 resulting solely from a stroke.

21 (4) "Client" means any person determined eligible by
22 the agency for services under this chapter.

23 (5) "Client advocate" means a friend or relative of
24 the client, or of the client's immediate family, who advocates
25 for the best interests of the client in any proceedings under
26 this chapter in which the client or his or her family has the
27 right or duty to participate.

28 (6) "Comprehensive assessment" means the process used
29 to determine eligibility for services under this chapter.

30 (7) "Comprehensive transitional education program"
31 means the program established in s. 393.18. ~~a group of jointly~~

1 ~~operating centers or units, the collective purpose of which is~~
2 ~~to provide a sequential series of educational care, training,~~
3 ~~treatment, habilitation, and rehabilitation services to~~
4 ~~persons who have developmental disabilities and who have~~
5 ~~severe or moderate maladaptive behaviors. However, nothing in~~
6 ~~this subsection shall require such programs to provide~~
7 ~~services only to persons with developmental disabilities. All~~
8 ~~such services shall be temporary in nature and delivered in a~~
9 ~~structured residential setting with the primary goal of~~
10 ~~incorporating the normalization principle to establish~~
11 ~~permanent residence for persons with maladaptive behaviors in~~
12 ~~facilities not associated with the comprehensive transitional~~
13 ~~education program. The staff shall include psychologists and~~
14 ~~teachers who shall be available to provide services in each~~
15 ~~component center or unit of the program. The psychologists~~
16 ~~shall be individuals who are licensed in this state and~~
17 ~~certified as behavior analysts in this state, or individuals~~
18 ~~who are certified as behavior analysts pursuant to s. 393.17.~~

19 ~~(a) Comprehensive transitional education programs~~
20 ~~shall include a minimum of two component centers or units, one~~
21 ~~of which shall be either an intensive treatment and~~
22 ~~educational center or a transitional training and educational~~
23 ~~center, which provide services to persons with maladaptive~~
24 ~~behaviors in the following sequential order:~~

25 ~~1. Intensive treatment and educational center. This~~
26 ~~component is a self contained residential unit providing~~
27 ~~intensive psychological and educational programming for~~
28 ~~persons with severe maladaptive behaviors, whose behaviors~~
29 ~~preclude placement in a less restrictive environment due to~~
30 ~~the threat of danger or injury to themselves or others.~~

31

1 ~~2. Transitional training and educational center. This~~
2 ~~component is a residential unit for persons with moderate~~
3 ~~maladaptive behaviors, providing concentrated psychological~~
4 ~~and educational programming emphasizing a transition toward a~~
5 ~~less restrictive environment.~~

6 ~~3. Community transition residence. This component is a~~
7 ~~residential center providing educational programs and such~~
8 ~~support services, training, and care as are needed to assist~~
9 ~~persons with maladaptive behaviors to avoid regression to more~~
10 ~~restrictive environments while preparing them for more~~
11 ~~independent living. Continuous shift staff shall be required~~
12 ~~for this component.~~

13 ~~4. Alternative living center. This component is a~~
14 ~~residential unit providing an educational and family living~~
15 ~~environment for persons with maladaptive behaviors, in a~~
16 ~~moderately unrestricted setting. Residential staff shall be~~
17 ~~required for this component.~~

18 ~~5. Independent living education center. This component~~
19 ~~is a facility providing a family living environment for~~
20 ~~persons with maladaptive behaviors, in a largely unrestricted~~
21 ~~setting which includes education and monitoring appropriate to~~
22 ~~support the development of independent living skills.~~

23 ~~(b) Centers or units that are components of a~~
24 ~~comprehensive transitional education program are subject to~~
25 ~~the license issued to the comprehensive transitional education~~
26 ~~program and may be located on either single or multiple sites.~~

27 ~~(c) Comprehensive transitional education programs~~
28 ~~shall develop individual education plans for each person with~~
29 ~~maladaptive behaviors who receives services therein. Such~~
30 ~~individual education plans shall be developed in accordance~~
31

1 ~~with the criteria specified in 20 U.S.C. ss. 401 et seq., and~~
2 ~~34 C.F.R. part 300.~~

3 ~~(d) In no instance shall the total number of persons~~
4 ~~with maladaptive behaviors being provided services in a~~
5 ~~comprehensive transitional education program exceed 120.~~

6 ~~(e) This subsection shall authorize licensure for~~
7 ~~comprehensive transitional education programs which by July 1,~~
8 ~~1989:~~

- 9 ~~1. Are in actual operation; or~~
10 ~~2. Own a fee simple interest in real property for~~
11 ~~which a county or city government has approved zoning allowing~~
12 ~~for the placement of the facilities described in this~~
13 ~~subsection, and have registered an intent with the department~~
14 ~~to operate a comprehensive transitional education program.~~
15 ~~However, nothing shall prohibit the assignment by such a~~
16 ~~registrant to another entity at a different site within the~~
17 ~~state, so long as there is compliance with all criteria of the~~
18 ~~comprehensive transitional education program and local zoning~~
19 ~~requirements and provided that each residential facility~~
20 ~~within the component centers or units of the program~~
21 ~~authorized under this subparagraph shall not exceed a capacity~~
22 ~~of 15 persons.~~

23 ~~(8) "Day habilitation facility" means any~~
24 ~~nonresidential facility which provides day habilitation~~
25 ~~services.~~

26 ~~(9) "Day habilitation service" means assistance with~~
27 ~~the acquisition, retention, or improvement in self help,~~
28 ~~socialization, and adaptive skills which takes place in a~~
29 ~~nonresidential setting, separate from the home or facility in~~
30 ~~which the individual resides. Day habilitation services shall~~
31 ~~focus on enabling the individual to attain or maintain his or~~

1 ~~her maximum functional level and shall be coordinated with any~~
2 ~~physical, occupational, or speech therapies listed in the plan~~
3 ~~of care.~~

4 ~~(8)(10)~~ "Developmental disability" means a disorder or
5 syndrome that is attributable to mental retardation, cerebral
6 palsy, autism, spina bifida, or Prader-Willi syndrome; that
7 manifests before the age of 18; and that constitutes a
8 substantial handicap that can reasonably be expected to
9 continue indefinitely.

10 ~~(9)(11)~~ "Developmental disabilities institution" means
11 a state-owned and state-operated facility, formerly known as a
12 "Sunland Center," providing for the care, habilitation, and
13 rehabilitation of clients with developmental disabilities.

14 ~~(10)(12)~~ "Direct service provider," ~~also known as~~
15 ~~"caregiver" in chapters 39 and 415 or "caretaker" in~~
16 ~~provisions relating to employment security checks,~~ means a
17 person 18 years of age or older who has direct face-to-face
18 contact with clients while providing services to the clients
19 ~~individuals with developmental disabilities,~~ or has access to
20 a client's living areas or to a client's funds or personal
21 property, and is not a relative of such individuals.

22 ~~(11)(13)~~ "Domicile" means the place where a client
23 legally resides, which place is his or her permanent home.
24 Domicile may be established as provided in s. 222.17. Domicile
25 may not be established in Florida by a minor who has no parent
26 domiciled in Florida, or by a minor who has no legal guardian
27 domiciled in Florida, or by any alien not classified as a
28 resident alien.

29 ~~(14)~~ ~~"Enclave" means a work station in public or~~
30 ~~private business or industry where a small group of persons~~
31 ~~with developmental disabilities is employed and receives~~

1 ~~training and support services or follow along services among~~
2 ~~nonhandicapped workers.~~

3 ~~(15) "Epilepsy" means a chronic brain disorder of~~
4 ~~various causes which is characterized by recurrent seizures~~
5 ~~due to excessive discharge of cerebral neurons. When found~~
6 ~~concurrently with retardation, autism, or cerebral palsy,~~
7 ~~epilepsy is considered a secondary disability for which the~~
8 ~~client is eligible to receive services to ameliorate this~~
9 ~~condition pursuant to this chapter.~~

10 ~~(12)(16)~~ "Express and informed consent" means consent
11 voluntarily given in writing with sufficient knowledge and
12 comprehension of the subject matter in order ~~involved~~ to
13 enable the person giving consent to make a knowing ~~an~~
14 ~~understanding and enlightened~~ decision without any element of
15 force, fraud, deceit, duress, or other form of constraint or
16 coercion.

17 ~~(13)(17)~~ "Family care program" means the program
18 established in s. 393.068.

19 ~~(18) "Follow along services" means those support~~
20 ~~services provided to persons with developmental disabilities~~
21 ~~in all supported employment programs and may include, but are~~
22 ~~not limited to, family support, assistance in meeting~~
23 ~~transportation and medical needs, employer intervention,~~
24 ~~performance evaluation, advocacy, replacement, retraining or~~
25 ~~promotional assistance, or other similar support services.~~

26 ~~(14)(19)~~ "Foster care facility" means a residential
27 facility licensed under this chapter which provides a family
28 living environment including supervision and care necessary to
29 meet the physical, emotional, and social needs of its
30 residents. The capacity of such a facility shall not be more
31 than three residents.

1 ~~(15)(20)~~ "Group home facility" means a residential
2 facility licensed under this chapter which provides a family
3 living environment including supervision and care necessary to
4 meet the physical, emotional, and social needs of its
5 residents. The capacity of such a facility shall be at least 4
6 but not more than 15 residents. ~~For the purposes of this~~
7 ~~chapter, group home facilities shall not be considered~~
8 ~~commercial enterprises.~~

9 ~~(16)(21)~~ "Guardian advocate" means a person appointed
10 by a written order of the court to represent a person with
11 developmental disabilities under s. 393.12.

12 ~~(17)(22)~~ "Habilitation" means the process by which a
13 client is assisted to acquire and maintain those life skills
14 which enable the client to cope more effectively with the
15 demands of his or her condition and environment and to raise
16 the level of his or her physical, mental, and social
17 efficiency. It includes, but is not limited to, programs of
18 formal structured education and treatment.

19 ~~(18)(23)~~ "High-risk child" means, for the purposes of
20 this chapter, a child from 3 ~~birth~~ to 5 years of age with one
21 or more of the following characteristics:

22 (a) A developmental delay in cognition, language, or
23 physical development.

24 (b) A child surviving a catastrophic infectious or
25 traumatic illness known to be associated with developmental
26 delay, when funds are specifically appropriated.

27 (c) A child with a parent or guardian with
28 developmental disabilities who requires assistance in meeting
29 the child's developmental needs.

30 (d) A child who has a physical or genetic anomaly
31 associated with developmental disability.

1 ~~(19)(24)~~ "Intermediate care facility for the
2 developmentally disabled" or "ICF/DD" means a residential
3 facility licensed and certified pursuant to part XI of chapter
4 400.

5 ~~(25)~~ "Job coach" means a person who provides
6 employment related training at a worksite to individuals with
7 developmental disabilities.

8 ~~(20)(26)~~ "Medical/dental services" means medically
9 necessary ~~those~~ services which are provided or ordered for a
10 client by a person licensed under ~~pursuant to the provisions~~
11 ~~of~~ chapter 458, chapter 459, or chapter 466. Such services may
12 include, but are not limited to, prescription drugs,
13 specialized therapies, nursing supervision, hospitalization,
14 dietary services, prosthetic devices, surgery, specialized
15 equipment and supplies, adaptive equipment, and other services
16 as required to prevent or alleviate a medical or dental
17 condition.

18 ~~(27)~~ "Mobile work crew" means a group of workers
19 employed by an agency that provides services outside the
20 agency, usually under service contracts.

21 ~~(28)~~ "Normalization principle" means the principle of
22 letting the client obtain an existence as close to the normal
23 as possible, making available to the client patterns and
24 conditions of everyday life which are as close as possible to
25 the norm and patterns of the mainstream of society.

26 ~~(29)~~ "Personal services" include, but are not limited
27 to, such services as: individual assistance with or
28 supervision of essential activities of daily living for
29 self care, including ambulation, bathing, dressing, eating,
30 grooming, and toileting, and other similar services that the
31 agency may define by rule. "Personal services" shall not be

1 ~~construed to mean the provision of medical, nursing, dental,~~
2 ~~or mental health services by the staff of a facility, except~~
3 ~~as provided in this chapter. In addition, an emergency~~
4 ~~response device installed in the apartment or living area of a~~
5 ~~resident shall not be classified as a personal service.~~

6 ~~(21)(30)~~ "Prader-Willi syndrome" means an inherited
7 condition typified by neonatal hypotonia with failure to
8 thrive, hyperphagia or an excessive drive to eat which leads
9 to obesity usually at 18 to 36 months of age, mild to moderate
10 mental retardation, hypogonadism, short stature, mild facial
11 dysmorphism, and a characteristic neurobehavior.

12 ~~(31)~~ "Reassessment" means ~~a process which periodically~~
13 ~~develops, through annual review and revision of a client's~~
14 ~~family or individual support plan, a knowledgeable statement~~
15 ~~of current needs and past development for each client.~~

16 ~~(22)(32)~~ "Relative" means an individual who is
17 connected by affinity or consanguinity to the client and who
18 is 18 years of age or older ~~more~~.

19 ~~(23)(33)~~ "Resident" means any person who is
20 developmentally disabled residing at a residential facility in
21 this ~~the~~ state, whether or not such person is a client of the
22 agency.

23 ~~(24)(34)~~ "Residential facility" means a facility
24 providing room and board and personal care for persons with
25 developmental disabilities.

26 ~~(35)~~ "Residential habilitation" means ~~assistance~~
27 ~~provided with acquisition, retention, or improvement in skills~~
28 ~~related to activities of daily living, such as personal~~
29 ~~grooming and cleanliness, bedmaking and household chores,~~
30 ~~eating and the preparation of food, and the social and~~

31

1 ~~adaptive skills necessary to enable the individual to reside~~
2 ~~in a noninstitutional setting.~~

3 ~~(25)(36)~~ "Residential habilitation center" means a
4 community residential facility licensed under this chapter
5 which that provides ~~residential~~ habilitation services. The
6 capacity of such a facility shall not be fewer than nine
7 residents. After October 1, 1989, ~~no~~ new residential
8 habilitation centers may not shall be licensed and the
9 licensed capacity ~~shall not be increased~~ for any existing
10 residential habilitation center may not be increased.

11 ~~(26)(37)~~ "Respite service" means appropriate,
12 short-term, temporary care that is provided to a person with
13 developmental disabilities to meet the planned or emergency
14 needs of the person or the family or other direct service
15 provider.

16 ~~(27)(38)~~ "Retardation" means significantly subaverage
17 general intellectual functioning existing concurrently with
18 deficits in adaptive behavior ~~and manifested during the period~~
19 ~~from conception to age 18~~. "Significantly subaverage general
20 intellectual functioning," for the purpose of this definition,
21 means performance which is two or more standard deviations
22 from the mean score on a standardized intelligence test
23 specified in the rules of the agency. "Adaptive behavior," for
24 the purpose of this definition, means the effectiveness or
25 degree with which an individual meets the standards of
26 personal independence and social responsibility expected of
27 his or her age, cultural group, and community.

28 ~~(28)~~ "Self-determination" means an individual's
29 freedom to exercise the same rights as all other citizens,
30 authority to exercise control over funds needed for one's own
31 support, including prioritizing these funds when necessary,

1 responsibility for the wise use of public funds, and self
2 advocacy to speak and advocate for oneself in order to gain
3 independence and ensure that individuals with a developmental
4 disability are treated equally.

5 ~~(39) "Severe self injurious behavior" means any~~
6 ~~chronic behavior that results in injury to the person's own~~
7 ~~body, which includes, but is not limited to, self hitting,~~
8 ~~head banging, self biting, scratching, and the ingestion of~~
9 ~~harmful or potentially harmful nutritive or nonnutritive~~
10 ~~substances.~~

11 ~~(29)(40)~~ "Specialized therapies" means those
12 treatments or activities prescribed by and provided by an
13 appropriately trained, licensed, or certified professional or
14 staff person and may include, but are not limited to, physical
15 therapy, speech therapy, respiratory therapy, occupational
16 therapy, behavior therapy, physical management services, and
17 related specialized equipment and supplies.

18 ~~(30)(41)~~ "Spina bifida" means, for purposes of this
19 chapter, a person with a medical diagnosis of spina bifida
20 cystica or myelomeningocele.

21 ~~(31)(42)~~ "Support coordinator" means a person who is
22 designated by the agency to assist individuals and families in
23 identifying their capacities, needs, and resources, as well as
24 finding and gaining access to necessary supports and services;
25 coordinating the delivery of supports and services; advocating
26 on behalf of the individual and family; maintaining relevant
27 records; and monitoring and evaluating the delivery of
28 supports and services to determine the extent to which they
29 meet the needs and expectations identified by the individual,
30 family, and others who participated in the development of the
31 support plan.

1 ~~(43)~~ "Supported employee" means a person who requires
2 ~~and receives supported employment services in order to~~
3 ~~maintain community based employment.~~

4 (32)~~(44)~~ "Supported employment" means employment
5 located or provided in ~~a normal employment setting which~~
6 ~~provides at least 20 hours employment per week in an~~
7 integrated work setting, with earnings paid on a commensurate
8 wage basis, and for which continued support is needed for job
9 maintenance.

10 (33)~~(45)~~ "Supported living" means a category of
11 individually determined services designed and coordinated in
12 such a manner as to provide assistance to adult clients who
13 require ongoing supports to live as independently as possible
14 in their own homes, to be integrated into the community, and
15 to participate in community life to the fullest extent
16 possible.

17 (34)~~(46)~~ "Training" means a planned approach to
18 assisting a client to attain or maintain his or her maximum
19 potential and includes services ranging from sensory
20 stimulation to instruction in skills for independent living
21 and employment.

22 (35)~~(47)~~ "Treatment" means the prevention,
23 amelioration, or cure of a client's physical and mental
24 disabilities or illnesses.

25 Section 7. Subsections (1), (2), and (4) of section
26 393.064, Florida Statutes, are amended to read:

27 393.064 Prevention.--

28 (1) The agency shall give priority to the development,
29 planning, and implementation of programs which have the
30 potential to prevent, correct, cure, or reduce the severity of
31 developmental disabilities. The agency shall direct an

1 interagency and interprogram effort for the continued
2 development of a prevention plan and program. The agency shall
3 identify, through demonstration projects, through program
4 evaluation, and through monitoring of programs and projects
5 conducted outside of the agency, any medical, social,
6 economic, or educational methods, techniques, or procedures
7 that have the potential to effectively ameliorate, correct, or
8 cure developmental disabilities. The agency program shall
9 determine the costs and benefits that would be associated with
10 such prevention efforts and shall implement, or recommend the
11 implementation of, those methods, techniques, or procedures
12 which are found likely to be cost-beneficial.

13 (2) Prevention services provided by the agency shall
14 ~~developmental services program~~ include services to high-risk
15 ~~and developmentally disabled~~ children from 3 birth to 5 years
16 of age, and their families, to meet the intent of chapter 411.
17 Except for services for children from birth to age 3 years
18 which ~~Such services shall include individual evaluations or~~
19 ~~assessments necessary to diagnose a developmental disability~~
20 ~~or high risk condition and to determine appropriate individual~~
21 ~~family and support services, unless evaluations or assessments~~
22 are the responsibility of the Division of Children's Medical
23 Services in the Department of Health Prevention and
24 ~~Intervention for children ages birth to 3 years eligible for~~
25 ~~services under this chapter~~ or part H of the Individuals with
26 Disabilities Education Act, such services ~~and~~ may include:

27 (a) Individual evaluations or assessments necessary to
28 diagnose a developmental disability or high-risk condition and
29 to determine appropriate, individual family and support
30 services.
31

1 ~~(b)(a)~~ Early intervention services, including
2 developmental training and specialized therapies. ~~Early~~
3 ~~intervention services, which are the responsibility of the~~
4 ~~Division of Children's Medical Services Prevention and~~
5 ~~Intervention for children ages birth to 3 years who are~~
6 ~~eligible for services under this chapter or under part II of~~
7 ~~the Individuals with Disabilities Education Act, shall not be~~
8 ~~provided through the developmental services program unless~~
9 ~~funding is specifically appropriated to the developmental~~
10 ~~services program for this purpose.~~

11 ~~(c)(b)~~ Support services, such as respite care, parent
12 education and training, parent-to-parent counseling, homemaker
13 services, and other services which allow families to maintain
14 and provide quality care to children in their homes. ~~The~~
15 ~~Division of Children's Medical Services Prevention and~~
16 ~~Intervention is responsible for the provision of services to~~
17 ~~children from birth to 3 years who are eligible for services~~
18 ~~under this chapter.~~

19 (4) There is created at the developmental disabilities
20 ~~services~~ institution in Gainesville a research and education
21 unit. Such unit shall be named the Raymond C. Philips Research
22 and Education Unit. The functions of such unit shall include:

23 (a) Research into the etiology of developmental
24 disabilities.

25 (b) Ensuring that new knowledge is rapidly
26 disseminated throughout ~~the developmental services program of~~
27 the agency.

28 (c) Diagnosis of unusual conditions and syndromes
29 associated with developmental disabilities in clients
30 identified throughout ~~the developmental~~ disabilities services
31 programs.

1 (d) Evaluation of families of clients with
2 developmental disabilities of genetic origin in order to
3 provide them with genetic counseling aimed at preventing the
4 recurrence of the disorder in other family members.

5 (e) Ensuring that health professionals in the
6 developmental disabilities ~~services~~ institution at Gainesville
7 have access to information systems that will allow them to
8 remain updated on newer knowledge and maintain their
9 postgraduate education standards.

10 (f) Enhancing staff training for professionals
11 throughout the agency in the areas of genetics and
12 developmental disabilities.

13 Section 8. Section 393.0641, Florida Statutes, is
14 amended to read:

15 393.0641 Program for the prevention and treatment of
16 severe self-injurious behavior.--

17 (1) Contingent upon specific appropriations, there is
18 created a diagnostic, treatment, training, and research
19 program for clients exhibiting severe self-injurious behavior.

20 As used in this section, the term "severe self-injurious
21 behavior" means any chronic behavior that results in injury to
22 the person's own body, including, but not limited to,
23 self-hitting, head banging, self-biting, scratching, and the
24 ingestion of harmful or potentially harmful nutritive or
25 nonnutritive substances.

26 (2) ~~The~~ This program shall:

27 (a) Serve as a resource center for information,
28 training, and program development.

29 (b) Research the diagnosis and treatment of severe
30 self-injurious behavior, and related disorders, and develop
31

1 methods of prevention and treatment of self-injurious
2 behavior.

3 (c) Identify individuals in critical need.

4 (d) Develop treatment programs which are meaningful to
5 individuals with developmental disabilities, in critical need,
6 while safeguarding and respecting the legal and human rights
7 of the individuals.

8 (e) Disseminate research findings on the prevention
9 and treatment of severe self-injurious behavior.

10 (f) Collect data on the type, severity, incidence, and
11 demographics of individuals with severe self-injurious
12 behavior, and disseminate the data.

13 ~~(3)(2)~~ ~~The This~~ program shall adhere to the provisions
14 of s. 393.13.

15 ~~(4)(3)~~ The agency may contract for the provision of
16 any portion or all of the services required by the program.

17 ~~(5)(4)~~ The agency may ~~has the authority to~~ license
18 this program and ~~shall~~ adopt rules to administer ~~implement~~ the
19 program.

20 Section 9. Subsections (1) and (4) of section 393.065,
21 Florida Statutes, are amended, and subsection (5) is added to
22 that section, to read:

23 393.065 Application and eligibility determination.--

24 (1) Application for services shall be made in writing
25 to the agency, in the service area ~~district~~ in which the
26 applicant resides. Employees of the agency's developmental
27 services program shall review each applicant for eligibility
28 within 45 days after the date the application is signed for
29 children under 6 years of age and within 60 days after the
30 date the application is signed for all other applicants. When
31 necessary to definitively identify individual conditions or

1 needs, the agency shall provide a comprehensive assessment.

2 Only applicants ~~individuals~~ whose domicile is in Florida are
3 eligible for services. Information accumulated by other
4 agencies, including professional reports and collateral data,
5 shall be considered in this process when available.

6 (4) The agency shall assess the level of need and
7 medical necessity for prospective residents of
8 intermediate-care facilities for the developmentally disabled
9 ~~after October 1, 1999~~. The agency may enter into an agreement
10 with the Department of Elderly Affairs for its Comprehensive
11 Assessment and Review for Long-Term-Care Services (CARES)
12 program to conduct assessments to determine the level of need
13 and medical necessity for long-term-care services under this
14 chapter. To the extent permissible under federal law, the
15 assessments shall ~~must~~ be funded under Title XIX of the Social
16 Security Act.

17 (5) The agency may adopt rules specifying application
18 procedures and eligibility criteria as needed to administer
19 this section.

20 Section 10. Section 393.0651, Florida Statutes, is
21 amended to read:

22 393.0651 Family or individual support plan.--The
23 agency shall provide directly or contract for the development
24 of a an appropriate family support plan for children ages 3
25 ~~birth~~ to 18 years of age and an individual support plan for
26 each client. ~~The parent or guardian of~~ The client ~~or~~, if
27 competent, the client's parent or guardian ~~client~~, or, when
28 appropriate, the client advocate, shall be consulted in the
29 development of the plan and shall receive a copy of the plan.
30 Each plan must ~~shall~~ include the most appropriate, least
31 restrictive, and most cost-beneficial environment for

1 accomplishment of the objectives for client progress and a
2 specification of all services authorized. The plan must ~~shall~~
3 include provisions for the most appropriate level of care for
4 the client. Within the specification of needs and services for
5 each client, when residential care is necessary, the agency
6 shall move toward placement of clients in residential
7 facilities based within the client's community. The ultimate
8 goal of each plan, whenever possible, shall be to enable the
9 client to live a dignified life in the least restrictive
10 setting, be that in the home or in the community. For children
11 under 6 years of age, the family support plan shall be
12 developed within the 45-day application period as specified in
13 s. 393.065(1); for all applicants 6 years of age or older, the
14 family or individual support plan shall be developed within
15 the 60-day period as specified in that subsection.

16 (1) The agency shall develop and specify by rule the
17 core components of support plans ~~to be used by each district.~~

18 (2)~~(a)~~ The family or individual support plan shall be
19 integrated with the individual education plan (IEP) for all
20 clients who are public school students entitled to a free
21 appropriate public education under the Individuals with
22 Disabilities Education Act, I.D.E.A., as amended. The family
23 or individual support plan and IEP shall be implemented to
24 maximize the attainment of educational and habilitation goals.

25 (a) If the IEP for a student enrolled in a public
26 school program indicates placement in a public or private
27 residential program is necessary to provide special education
28 and related services to a client, the local education agency
29 shall provide for the costs of that service in accordance with
30 the requirements of the Individuals with Disabilities
31 Education Act, I.D.E.A., as amended. This shall not preclude

1 | local education agencies and the agency from sharing the
2 | residential service costs of students who are clients and
3 | require residential placement. ~~Under no circumstances shall~~
4 | ~~clients entitled to a public education or their parents be~~
5 | ~~assessed a fee by the agency under s. 402.33 for placement in~~
6 | ~~a residential program.~~

7 | (b) For clients who are entering or exiting the school
8 | system, an interdepartmental staffing team composed of
9 | representatives of the agency and the local school system
10 | shall develop a written transitional living and training plan
11 | with the participation of the client or with the parent or
12 | guardian of the client, or the client advocate, as
13 | appropriate.

14 | (3) Each family or individual support plan shall be
15 | facilitated through case management designed solely to advance
16 | the individual needs of the client.

17 | (4) In the development of the family or individual
18 | support plan, a client advocate may be appointed by the
19 | support planning team for a client who is a minor or for a
20 | client who is not capable of express and informed consent
21 | when:

22 | (a) The parent or guardian cannot be identified;

23 | (b) The whereabouts of the parent or guardian cannot
24 | be discovered; or

25 | (c) The state is the only legal representative of the
26 | client.

27 |
28 | Such appointment shall not be construed to extend the powers
29 | of the client advocate to include any of those powers
30 | delegated by law to a legal guardian.

31 |

1 (5) The agency shall place a client in the most
2 appropriate and least restrictive, and cost-beneficial,
3 residential facility according to his or her individual
4 support ~~habilitation~~ plan. ~~The parent or guardian of~~ The
5 client ~~or~~, if competent, the client's parent or guardian
6 ~~client~~, or, when appropriate, the client advocate, and the
7 administrator of the ~~residential~~ facility to which placement
8 is proposed shall be consulted in determining the appropriate
9 placement for the client. Considerations for placement shall
10 be made in the following order:
11 (a) Client's own home or the home of a family member
12 or direct service provider.
13 (b) Foster care facility.
14 (c) Group home facility.
15 (d) Intermediate care facility for the developmentally
16 disabled.
17 (e) Other facilities licensed by the agency which
18 offer special programs for people with developmental
19 disabilities.
20 (f) Developmental disabilities ~~services~~ institution.
21 (6) In developing a client's annual family or
22 individual support plan, the individual or family with the
23 assistance of the support planning team shall identify
24 measurable objectives for client progress and shall specify a
25 time period expected for achievement of each objective.
26 (7) The individual, family, and support coordinator
27 shall review progress in achieving the objectives specified in
28 each client's family or individual support plan, and shall
29 revise the plan annually, following consultation with the
30 client, if competent, or with the parent or guardian of the
31 client, or, when appropriate, the client advocate. The agency

1 or designated contractor shall annually report in writing to
2 the client, if competent, or to the parent or guardian of the
3 client, or to the client advocate, when appropriate, with
4 respect to the client's habilitative and medical progress.

5 (8) Any client, or any parent of a minor client, or
6 guardian, authorized guardian advocate, or client advocate for
7 a client, who is substantially affected by the client's
8 initial family or individual support plan, or the annual
9 review thereof, shall have the right to file a notice to
10 challenge the decision pursuant to ss. 120.569 and 120.57.
11 Notice of such right to appeal shall be included in all
12 support plans provided by the agency.

13 Section 11. Section 393.0654, Florida Statutes, is
14 created to read.

15 393.0654 Direct service providers; private sector
16 services.--It is not a violation of s. 112.313(7) for a direct
17 service provider who is employed by the agency to own,
18 operate, or work in a private facility that is a service
19 provider under contract with the agency if:

20 (1) The employee does not have any role in the
21 agency's placement recommendations or the client's
22 decisionmaking process regarding placement;

23 (2) The direct service provider's employment with the
24 agency does not compromise the ability of the client to make a
25 voluntary choice among private providers for services;

26 (3) The employee's employment outside the agency does
27 not create a conflict with the employee's public duties and
28 does not impede the full and faithful discharge of the
29 employee's duties as assigned by the agency; and

30 (4) The service provider discloses the dual employment
31 or ownership status to the agency and all clients within the

1 provider's care. The disclosure must be given to the agency,
2 the client, and the client's guardian or guardian advocate, if
3 appropriate.

4 Section 12. Section 393.0655, Florida Statutes, is
5 amended to read:

6 393.0655 Screening of direct service providers.--

7 (1) MINIMUM STANDARDS.--The agency shall require level
8 2 employment screening pursuant to chapter 435 for direct
9 service providers who are unrelated to their clients,
10 including support coordinators, and managers and supervisors
11 of residential facilities or comprehensive transitional
12 education programs licensed under this chapter ~~s. 393.067~~ and
13 any other person, including volunteers, who provide care or
14 services, who have access to a client's living areas, or who
15 have access to a client's funds or personal property.
16 Background screening shall include employment history checks
17 as provided in s. 435.03(1) and local criminal records checks
18 through local law enforcement agencies.

19 (a) A volunteer who assists on an intermittent basis
20 for less than 40 hours per month does not have to be screened
21 if the volunteer is under the direct and constant visual
22 supervision of persons who meet the screening requirements of
23 this section.

24 (b) Licensed physicians, nurses, or other
25 professionals licensed and regulated by the Department of
26 Health are not subject to background screening pursuant to
27 this section if they are providing a service that is within
28 their scope of licensed practice.

29 (c) A person selected by the family or the individual
30 with developmental disabilities and paid by the family or the
31

1 individual to provide supports or services is not required to
2 have a background screening under this section.

3 (d) Persons 12 years of age or older, including family
4 members, residing with ~~a the~~ direct services provider who
5 provides services to clients in his or her own place of
6 residence, ~~including family members,~~ are subject to background
7 screening; however, such persons who are 12 to 18 years of age
8 shall be screened for delinquency records only.

9 (e) A direct service provider who is awaiting the
10 completion of background screening is temporarily exempt from
11 the screening requirements under this section if the provider
12 is under the direct and constant visual supervision of persons
13 who meet the screening requirements of this section. Such
14 exemption expires 90 days after the direct service provider
15 first provides care or services to clients, has access to a
16 client's living areas, or has access to a client's funds or
17 personal property.

18 (2) EXEMPTIONS FROM DISQUALIFICATION.--The agency may
19 grant exemptions from disqualification from working with
20 children or adults with developmental disabilities only as
21 provided in s. 435.07.

22 (3) PAYMENT FOR PROCESSING OF FINGERPRINTS AND STATE
23 CRIMINAL RECORDS CHECKS.--The costs of processing fingerprints
24 and the state criminal records checks shall be borne by the
25 employer or by the employee or individual who is being
26 screened.

27 (4) ~~TERMINATION EXCLUSION FROM OWNING, OPERATING, OR~~
28 ~~BEING EMPLOYED BY A DIRECT SERVICE PROVIDER RESIDENTIAL~~
29 ~~FACILITY; HEARINGS PROVIDED.--~~

30 (a) The agency shall deny, suspend, terminate, or
31 revoke a license, certification, rate agreement, purchase

1 order, or contract, or pursue other remedies provided in s.
2 393.0673, s. 393.0675, or s. 393.0678 in addition to or in
3 lieu of denial, suspension, termination, or revocation for
4 failure to comply with this section.

5 (b) When the agency has reasonable cause to believe
6 that grounds for denial or termination of employment exist, it
7 shall notify, in writing, the employer and the person ~~direct~~
8 ~~service provider~~ affected, stating the specific record that
9 ~~which~~ indicates noncompliance with the standards in this
10 section.

11 (c) The procedures established for hearing under
12 chapter 120 shall be available to the employer and the person
13 affected ~~direct service provider~~ in order to present evidence
14 relating either to the accuracy of the basis of exclusion or
15 to the denial of an exemption from disqualification.

16 (d) Refusal on the part of an employer to dismiss a
17 manager, supervisor, or direct service provider who has been
18 found to be in noncompliance with standards of this section
19 shall result in automatic denial, termination, or revocation
20 of the license or, certification, ~~rate agreement, purchase~~
21 ~~order, or contract~~, in addition to any other remedies pursued
22 by the agency.

23 Section 13. Section 393.0657, Florida Statutes, is
24 amended to read:

25 393.0657 Persons not required to be refingerprinted or
26 rescreened.--~~Any provision of law to the contrary~~
27 ~~notwithstanding~~, Human resource personnel who have been
28 fingerprinted or screened pursuant to chapters 393, 394, 397,
29 402, and 409, and teachers who have been fingerprinted
30 pursuant to chapter 1012, who have not been unemployed for
31 more than 90 days thereafter, and who under the penalty of

1 | perjury attest to the completion of such fingerprinting or
2 | screening and to compliance with the provisions of this
3 | section ~~and the standards for good moral character as~~
4 | ~~contained in such provisions as ss. 110.1127(3), 393.0655(1),~~
5 | ~~394.457(6), 397.451, 402.305(2), and 409.175(6),~~ shall not be
6 | required to be refingerprinted or rescreened in order to
7 | comply with the ~~any direct service provider~~ screening or
8 | fingerprinting requirements of this chapter.

9 | Section 14. Section 393.066, Florida Statutes, is
10 | amended to read:

11 | 393.066 Community services and treatment ~~for persons~~
12 | ~~who are developmentally disabled.--~~

13 | (1) The agency shall plan, develop, organize, and
14 | implement its programs of services and treatment for persons
15 | with developmental disabilities ~~who are developmentally~~
16 | ~~disabled~~ to allow clients to live as independently as possible
17 | in their own homes or communities and to achieve productive
18 | lives as close to normal as possible. All elements of
19 | community-based services shall be made available, and
20 | eligibility for these services shall be consistent across the
21 | state. ~~In addition, all purchased services shall be approved~~
22 | ~~by the agency.~~

23 | (2) All services needed shall be purchased instead of
24 | provided directly by the agency, when such arrangement is more
25 | cost-efficient than having those services provided directly.
26 | All purchased services must be approved by the agency.

27 | (3) Community-based services that are medically
28 | necessary to prevent institutionalization shall, to the extent
29 | of available resources, include:

30 | (a) Day habilitation services, including developmental
31 | training services.

- 1 (b) Family care services.
- 2 (c) Guardian advocate referral services.
- 3 (d) Medical/dental services, except that medical
- 4 services shall not be provided to clients with spina bifida
- 5 except as specifically appropriated by the Legislature.
- 6 (e) Parent training.
- 7 (f) Recreation.
- 8 (g) Residential facility services.
- 9 (h) Respite services.
- 10 (i) Social services.
- 11 (j) Specialized therapies.
- 12 (k) Supported employment, ~~including enclave, job~~
- 13 ~~coach, mobile work crew, and follow along services.~~
- 14 (l) Supported living.
- 15 (m) Training, including behavioral-analysis services
- 16 ~~behavioral programming.~~
- 17 (n) Transportation.
- 18 (o) Other habilitative and rehabilitative services as
- 19 needed.
- 20 (4) The agency shall utilize the services of private
- 21 businesses, not-for-profit organizations, and units of local
- 22 government whenever such services are more cost-efficient than
- 23 such services provided directly by the department, including
- 24 arrangements for provision of residential facilities.
- 25 (5) In order to improve the potential for utilization
- 26 of more cost-effective, community-based residential
- 27 facilities, the agency shall promote the statewide development
- 28 of day habilitation services for clients who live with a
- 29 direct service provider in a community-based residential
- 30 facility and who do not require 24-hour-a-day care in a
- 31 hospital or other health care institution, but who may, in the

1 absence of day habilitation services, require admission to a
2 developmental disabilities institution. Each day service
3 facility shall provide a protective physical environment for
4 clients, ensure that direct service providers meet minimum
5 screening standards as required in s. 393.0655, make available
6 to all day habilitation service participants at least one meal
7 on each day of operation, provide facilities to enable
8 participants to obtain needed rest while attending the
9 program, as appropriate, and provide social and educational
10 activities designed to stimulate interest and provide
11 socialization skills.

12 (6) To promote independence and productivity, the
13 agency shall provide supports and services, within available
14 resources, to assist clients enrolled in Medicaid waivers who
15 choose to pursue gainful employment.

16 (7) For the purpose of making needed community-based
17 residential facilities available at the least possible cost to
18 the state, the agency is authorized to lease privately owned
19 residential facilities under long-term rental agreements, if
20 such rental agreements are projected to be less costly to the
21 state over the useful life of the facility than state purchase
22 or state construction of such a facility.

23 (8) The agency may adopt rules governing the
24 availability and purchase of services that are to ensure
25 compliance with federal laws or regulations that apply to
26 services provided pursuant to this section.

27 Section 15. Section 393.067, Florida Statutes, is
28 amended to read:

29 393.067 Facility licensure ~~of residential facilities~~
30 ~~and comprehensive transitional education programs.--~~
31

1 (1) The agency shall provide through its licensing
2 authority and by rule license-application procedures, a system
3 ~~of~~ provider qualifications, facility and client-care
4 standards, requirements for client records, requirements for
5 staff qualifications and training criteria for meeting
6 ~~standards~~, and requirements for monitoring foster care for
7 ~~residential~~ facilities, group home facilities, residential
8 habilitation centers, and comprehensive transitional education
9 programs that serve agency clients. Receipt of a license under
10 this section does not create a property right in the
11 recipient. A license issued under this chapter is a public
12 trust and a privilege, and is not an entitlement. This
13 privilege must guide the finder of fact or trier of law at any
14 administrative proceeding or court action initiated by the
15 agency.

16 (2) The agency shall conduct annual inspections and
17 reviews of ~~residential~~ facilities and ~~comprehensive~~
18 ~~transitional education~~ programs licensed under this section
19 annually.

20 (3) An application for a license under this section
21 must ~~for a residential facility or a comprehensive~~
22 ~~transitional education program~~ shall be made to the agency on
23 a form furnished by it and shall be accompanied by the
24 appropriate license fee.

25 (4) The application shall be under oath and shall
26 contain the following:

27 (a) The name and address of the applicant, if an
28 applicant is an individual; if the applicant is a firm,
29 partnership, or association, the name and address of each
30 member thereof; if the applicant is a corporation, its name
31 and address and the name and address of each director and each

1 officer thereof; and the name by which the facility or program
2 is to be known.

3 (b) The location of the facility or program for which
4 a license is sought.

5 (c) The name of the person or persons under whose
6 management or supervision the facility or program will be
7 conducted.

8 (d) The number and type of residents or clients for
9 which maintenance, care, education, or treatment is to be
10 provided by the facility or program.

11 (e) The number and location of the component centers
12 or units which will compose the comprehensive transitional
13 education program.

14 (f) A description of the types of services and
15 treatment to be provided by the facility or program.

16 (g) Information relating to the number, experience,
17 and training of the employees of the facility or program.

18 (h) Certification that the staff of the facility or
19 program will receive training to detect and prevent sexual
20 abuse of residents and clients.

21 (i) Such other information as the agency determines is
22 necessary to carry out the provisions of this chapter.

23 ~~(5) The applicant shall submit evidence which~~
24 ~~establishes the good moral character of the manager or~~
25 ~~supervisor of the facility or program and the direct service~~
26 ~~providers in the facility or program and its component centers~~
27 ~~or units. A license may be issued if all the screening~~
28 ~~materials have been timely submitted; however, a license may~~
29 ~~not be issued or renewed if any of the direct service~~
30 ~~providers have failed the screening required by s. 393.0655.~~
31

1 ~~(a)1. A licensed residential facility or comprehensive~~
2 ~~transitional education program which applies for renewal of~~
3 ~~its license shall submit to the agency a list of direct~~
4 ~~service providers who have worked on a continuous basis at the~~
5 ~~applicant facility or program since submitting fingerprints to~~
6 ~~the agency or the Department of Children and Family Services,~~
7 ~~identifying those direct service providers for whom a written~~
8 ~~assurance of compliance was provided by the agency or~~
9 ~~department and identifying those direct service providers who~~
10 ~~have recently begun working at the facility or program and are~~
11 ~~awaiting the results of the required fingerprint check along~~
12 ~~with the date of the submission of those fingerprints for~~
13 ~~processing. The agency shall by rule determine the frequency~~
14 ~~of requests to the Department of Law Enforcement to run state~~
15 ~~criminal records checks for such direct service providers~~
16 ~~except for those direct service providers awaiting the results~~
17 ~~of initial fingerprint checks for employment at the applicant~~
18 ~~facility or program. The agency shall review the records of~~
19 ~~the direct service providers at the applicant facility or~~
20 ~~program with respect to the crimes specified in s. 393.0655~~
21 ~~and shall notify the facility or program of its findings. When~~
22 ~~disposition information is missing on a criminal record, it is~~
23 ~~the responsibility of the person being screened, upon request~~
24 ~~of the agency, to obtain and supply within 30 days the missing~~
25 ~~disposition information to the agency. Failure to supply the~~
26 ~~missing information within 30 days or to show reasonable~~
27 ~~efforts to obtain such information shall result in automatic~~
28 ~~disqualification.~~
29 ~~2. The applicant shall sign an affidavit under penalty~~
30 ~~of perjury stating that all new direct service providers have~~
31 ~~been fingerprinted and that the facility's or program's~~

1 ~~remaining direct service providers have worked at the~~
2 ~~applicant facility or program on a continuous basis since~~
3 ~~being initially screened at that facility or program or have a~~
4 ~~written assurance of compliance from the agency or department.~~

5 (5)(b) As a prerequisite for issuance of an the
6 initial or renewal license, the applicant, manager,
7 supervisor, and all staff members of the direct service
8 provider of a facility or program licensed under this section
9 must submit to background screening as required under s.
10 393.0655. A license may not be issued or renewed if the
11 applicant and any of the managers, supervisors, or direct
12 service providers have failed background screenings as
13 required under s. 393.0655. The agency shall determine by rule
14 the frequency of background screening. The applicant shall
15 submit with each initial or renewal application a signed
16 affidavit under penalty of perjury stating that the applicant
17 is in compliance with all requirements for background
18 screening. ~~to a residential facility or comprehensive~~
19 ~~transitional education program;~~

20 ~~1. The applicant shall submit to the agency a complete~~
21 ~~set of fingerprints, taken by an authorized law enforcement~~
22 ~~agency or an employee of the agency who is trained to take~~
23 ~~fingerprints, for the manager, supervisor, or direct service~~
24 ~~providers of the facility or program;~~

25 ~~2. The agency shall submit the fingerprints to the~~
26 ~~Department of Law Enforcement for state processing and for~~
27 ~~federal processing by the Federal Bureau of Investigation; and~~

28 ~~3. The agency shall review the record of the manager~~
29 ~~or supervisor with respect to the crimes specified in s.~~
30 ~~393.0655(1) and shall notify the applicant of its findings.~~
31 ~~When disposition information is missing on a criminal record,~~

1 ~~it is the responsibility of the manager or supervisor, upon~~
2 ~~request of the agency, to obtain and supply within 30 days the~~
3 ~~missing disposition information to the agency. Failure to~~
4 ~~supply the missing information within 30 days or to show~~
5 ~~reasonable efforts to obtain such information shall result in~~
6 ~~automatic disqualification.~~

7 ~~(c) The agency or a residential facility or~~
8 ~~comprehensive transitional education program may not use the~~
9 ~~criminal records or juvenile records of a person obtained~~
10 ~~under this subsection for any purpose other than determining~~
11 ~~if that person meets the minimum standards for good moral~~
12 ~~character for a manager or supervisor of, or direct service~~
13 ~~provider in, such a facility or program. The criminal records~~
14 ~~or juvenile records obtained by the agency or a residential~~
15 ~~facility or comprehensive transitional education program for~~
16 ~~determining the moral character of a manager, supervisor, or~~
17 ~~direct service provider are exempt from s. 119.07(1).~~

18 ~~(6) Each applicant for licensure as an intermediate~~
19 ~~care facility for the developmentally disabled must comply~~
20 ~~with the following requirements:~~

21 ~~(a) Upon receipt of a completed, signed, and dated~~
22 ~~application, the agency shall require background screening, in~~
23 ~~accordance with the level 2 standards for screening set forth~~
24 ~~in chapter 435, of the managing employee, or other similarly~~
25 ~~titled individual who is responsible for the daily operation~~
26 ~~of the facility, and of the financial officer, or other~~
27 ~~similarly titled individual who is responsible for the~~
28 ~~financial operation of the center, including billings for~~
29 ~~resident care and services. The applicant must comply with~~
30 ~~the procedures for level 2 background screening as set forth~~
31 ~~in chapter 435, as well as the requirements of s. 435.03(3).~~

1 ~~(b) The agency may require background screening of any~~
2 ~~other individual who is an applicant if the agency has~~
3 ~~probable cause to believe that he or she has been convicted of~~
4 ~~a crime or has committed any other offense prohibited under~~
5 ~~the level 2 standards for screening set forth in chapter 435.~~

6 ~~(c) Proof of compliance with the level 2 background~~
7 ~~screening requirements of chapter 435 which has been submitted~~
8 ~~within the previous 5 years in compliance with any other~~
9 ~~health care licensure requirements of this state is acceptable~~
10 ~~in fulfillment of the requirements of paragraph (a).~~

11 ~~(d) A provisional license may be granted to an~~
12 ~~applicant when each individual required by this section to~~
13 ~~undergo background screening has met the standards for the~~
14 ~~Department of Law Enforcement background check, but the agency~~
15 ~~has not yet received background screening results from the~~
16 ~~Federal Bureau of Investigation, or a request for a~~
17 ~~disqualification exemption has been submitted to the agency as~~
18 ~~set forth in chapter 435, but a response has not yet been~~
19 ~~issued. A standard license may be granted to the applicant~~
20 ~~upon the agency's receipt of a report of the results of the~~
21 ~~Federal Bureau of Investigation background screening for each~~
22 ~~individual required by this section to undergo background~~
23 ~~screening which confirms that all standards have been met, or~~
24 ~~upon the granting of a disqualification exemption by the~~
25 ~~agency as set forth in chapter 435. Any other person who is~~
26 ~~required to undergo level 2 background screening may serve in~~
27 ~~his or her capacity pending the agency's receipt of the report~~
28 ~~from the Federal Bureau of Investigation. However, the person~~
29 ~~may not continue to serve if the report indicates any~~
30 ~~violation of background screening standards and a~~
31

1 ~~disqualification exemption has not been requested of and~~
2 ~~granted by the agency as set forth in chapter 435.~~

3 ~~(e) Each applicant must submit to the agency, with its~~
4 ~~application, a description and explanation of any exclusions,~~
5 ~~permanent suspensions, or terminations of the applicant from~~
6 ~~the Medicare or Medicaid programs. Proof of compliance with~~
7 ~~the requirements for disclosure of ownership and control~~
8 ~~interests under the Medicaid or Medicare programs shall be~~
9 ~~accepted in lieu of this submission.~~

10 ~~(f) Each applicant must submit to the agency a~~
11 ~~description and explanation of any conviction of an offense~~
12 ~~prohibited under the level 2 standards of chapter 435 by a~~
13 ~~member of the board of directors of the applicant, its~~
14 ~~officers, or any individual owning 5 percent or more of the~~
15 ~~applicant. This requirement does not apply to a director of a~~
16 ~~not for profit corporation or organization if the director~~
17 ~~serves solely in a voluntary capacity for the corporation or~~
18 ~~organization, does not regularly take part in the day to day~~
19 ~~operational decisions of the corporation or organization,~~
20 ~~receives no remuneration for his or her services on the~~
21 ~~corporation or organization's board of directors, and has no~~
22 ~~financial interest and has no family members with a financial~~
23 ~~interest in the corporation or organization, provided that the~~
24 ~~director and the not for profit corporation or organization~~
25 ~~include in the application a statement affirming that the~~
26 ~~director's relationship to the corporation satisfies the~~
27 ~~requirements of this paragraph.~~

28 ~~(g) A license may not be granted to an applicant if~~
29 ~~the applicant or managing employee has been found guilty of,~~
30 ~~regardless of adjudication, or has entered a plea of nolo~~
31 ~~contendere or guilty to, any offense prohibited under the~~

1 ~~level 2 standards for screening set forth in chapter 435,~~
2 ~~unless an exemption from disqualification has been granted by~~
3 ~~the agency as set forth in chapter 435.~~

4 ~~(h) The agency may deny or revoke licensure if the~~
5 ~~applicant:~~

6 1. ~~Has falsely represented a material fact in the~~
7 ~~application required by paragraph (e) or paragraph (f), or has~~
8 ~~omitted any material fact from the application required by~~
9 ~~paragraph (e) or paragraph (f); or~~

10 2. ~~Has had prior action taken against the applicant~~
11 ~~under the Medicaid or Medicare program as set forth in~~
12 ~~paragraph (e).~~

13 ~~(i) An application for license renewal must contain~~
14 ~~the information required under paragraphs (e) and (f).~~

15 ~~(6)(7)~~ The applicant shall furnish satisfactory proof
16 of financial ability to operate and conduct the facility or
17 program in accordance with the requirements of this chapter
18 and all rules promulgated hereunder.

19 ~~(7)(8)~~ The agency shall adopt rules establishing
20 minimum standards for ~~licensure of residential~~ facilities and
21 ~~comprehensive transitional education~~ programs licensed under
22 this section, including rules requiring facilities and
23 programs to train staff to detect and prevent sexual abuse of
24 residents and clients, minimum standards of quality and
25 adequacy of client care, incident-reporting requirements, and
26 uniform firesafety standards established by the State Fire
27 Marshal which are appropriate to the size of the facility or
28 of the component centers or units of the program.

29 ~~(8)(9)~~ The agency ~~and the Agency for Health Care~~
30 ~~Administration~~, after consultation with the Department of
31 Community Affairs, shall adopt rules for foster care

1 ~~residential~~ facilities, group home facilities, and residential
2 habilitation centers which establish ~~under the respective~~
3 ~~regulatory jurisdiction of each establishing~~ minimum standards
4 for the preparation and annual update of a comprehensive
5 emergency management plan. At a minimum, the rules must
6 provide for plan components that address emergency evacuation
7 transportation; adequate sheltering arrangements; postdisaster
8 activities, including emergency power, food, and water;
9 postdisaster transportation; supplies; staffing; emergency
10 equipment; individual identification of residents and transfer
11 of records; and responding to family inquiries. The
12 comprehensive emergency management plan for all comprehensive
13 transitional education programs and for homes serving
14 individuals who have complex medical conditions is subject to
15 review and approval by the local emergency management agency.
16 During its review, the local emergency management agency shall
17 ensure that the agency and the Department of Community Affairs
18 ~~following agencies~~, at a minimum, are given the opportunity to
19 review the plan: ~~the Agency for Health Care Administration,~~
20 ~~the Agency for Persons with Disabilities, and the Department~~
21 ~~of Community Affairs~~. Also, appropriate volunteer
22 organizations must be given the opportunity to review the
23 plan. The local emergency management agency shall complete its
24 review within 60 days and either approve the plan or advise
25 the facility of necessary revisions.

26 ~~(9)(10)~~ The agency may conduct unannounced inspections
27 to determine compliance by foster care residential facilities,
28 group home facilities, residential habilitation centers, and
29 comprehensive transitional education programs with the
30 applicable provisions of this chapter and the rules adopted
31 pursuant hereto, including the rules adopted for training

1 staff of a facility or a program to detect and prevent sexual
2 abuse of residents and clients. The facility or program shall
3 make copies of inspection reports available to the public upon
4 request.

5 ~~(11) An alternative living center and an independent~~
6 ~~living education center, as defined in s. 393.063, shall be~~
7 ~~subject to the provisions of s. 419.001, except that such~~
8 ~~centers shall be exempt from the 1,000 foot radius requirement~~
9 ~~of s. 419.001(2) if:~~

10 ~~(a) Such centers are located on a site zoned in a~~
11 ~~manner so that all the component centers of a comprehensive~~
12 ~~transition education center may be located thereon; or~~

13 ~~(b) There are no more than three such centers within~~
14 ~~said radius of 1,000 feet.~~

15 ~~(10)(12)~~ Each residential facility or ~~comprehensive~~
16 ~~transitional education~~ program licensed under this section ~~by~~
17 ~~the agency~~ shall forward annually to the agency a true and
18 accurate sworn statement of its costs of providing care to
19 clients funded by the agency.

20 ~~(11)(13)~~ The agency may audit the records of any
21 ~~residential~~ facility or ~~comprehensive transitional education~~
22 program that it has reason to believe may not be in full
23 compliance with the provisions of this section; provided that,
24 any financial audit of such facility or program shall be
25 limited to the records of clients funded by the agency.

26 ~~(12)(14)~~ The agency shall establish, for the purpose
27 of control of licensure costs, a uniform management
28 information system and a uniform reporting system with uniform
29 definitions and reporting categories.

30
31

1 ~~(13)~~~~(15)~~ Facilities and programs licensed pursuant to
2 this section shall adhere to all rights specified in s.
3 393.13, including those enumerated in s. 393.13(4).

4 ~~(14)~~~~(16)~~ An ~~No~~ unlicensed ~~residential~~ facility or
5 ~~comprehensive transitional education~~ program may not ~~shall~~
6 receive state funds. A license for the operation of a
7 facility or program shall not be renewed if the licensee has
8 any outstanding fines assessed pursuant to this chapter
9 wherein final adjudication of such fines has been entered.

10 ~~(15)~~~~(17)~~ The agency shall not be required to contract
11 with new facilities licensed after October 1, 1989, pursuant
12 to this chapter. Pursuant to chapter 287, the agency shall
13 continue to contract within available resources for
14 residential services with facilities licensed prior to October
15 1, 1989, if such facilities comply with the provisions of this
16 chapter and all other applicable laws and regulations.

17 Section 16. Subsections (1) and (2) of section
18 393.0673, Florida Statutes, are amended, and subsection (5) is
19 added to that section, to read:

20 393.0673 Denial, suspension, revocation of license;
21 moratorium on admissions; administrative fines; procedures.--

22 (1) The agency may deny, revoke, or suspend a license
23 or impose an administrative fine, not to exceed \$1,000 per
24 violation per day, for a violation of any provision of s.
25 393.0655 or s. 393.067 or adopted rules ~~adopted pursuant~~
26 ~~thereto~~. All hearings shall be held within the county in which
27 the licensee or applicant operates or applies for a license to
28 operate a facility as defined herein.

29 (2) The agency, as a part of any final order issued by
30 it pursuant to ~~under~~ the provisions of this chapter, may
31 impose such fine as it deems proper, except that such fine may

1 not exceed \$1,000 for each violation. Each day a violation of
2 this chapter occurs constitutes a separate violation and is
3 subject to a separate fine, but in no event may the aggregate
4 amount of any fine exceed \$10,000. ~~Fines paid by any facility~~
5 ~~licensee under the provisions of this subsection shall be~~
6 ~~deposited in the Resident Protection Trust Fund and expended~~
7 ~~as provided in s. 400.063.~~

8 (5) The agency shall establish by rule criteria for
9 evaluating the severity of violations and for determining the
10 amount of fines imposed.

11 Section 17. Subsection (1) of section 393.0674,
12 Florida Statutes, is amended to read:

13 393.0674 Penalties.--

14 (1) It is a misdemeanor of the first degree,
15 punishable as provided in s. 775.082 or s. 775.083, for any
16 person willfully, knowingly, or intentionally to:

17 (a) Fail, by false statement, misrepresentation,
18 impersonation, or other fraudulent means, to disclose in any
19 application for voluntary or paid employment a material fact
20 used in making a determination as to such person's
21 qualifications to be a direct service provider;

22 (b) Provide or attempt to provide supports or services
23 with direct service providers who are not in compliance
24 ~~noncompliance~~ with the background-screening requirements
25 ~~minimum standards for good moral character as contained in~~
26 this chapter; or

27 (c) Use information from the criminal records or
28 central abuse hotline obtained under s. 393.0655, s. 393.066,
29 or s. 393.067 for any purpose other than screening that person
30 for employment as specified in those sections or release such
31

1 information to any other person for any purpose other than
2 screening for employment as specified in those sections.

3 Section 18. Subsection (3) of section 393.0675,
4 Florida Statutes, is amended to read:

5 393.0675 Injunctive proceedings authorized.--

6 (3) The agency may institute proceedings for an
7 injunction in a court of competent jurisdiction to terminate
8 the operation of a provider of supports or services if such
9 provider has willfully and knowingly refused to comply with
10 the screening requirement for direct service providers or has
11 refused to terminate direct service providers found not to be
12 in compliance with such ~~the~~ requirements ~~for good moral~~
13 ~~character~~.

14 Section 19. Subsections (1) and (11) of section
15 393.0678, Florida Statutes, are amended to read:

16 393.0678 Receivership proceedings.--

17 (1) The agency may petition a court of competent
18 jurisdiction for the appointment of a receiver for ~~an~~
19 ~~intermediate care facility for the developmentally disabled,~~ a
20 residential habilitation center, or a group home facility
21 owned and operated by a corporation or partnership when any of
22 the following conditions exist:

23 (a) Any person is operating a facility without a
24 license and refuses to make application for a license as
25 required by s. 393.067 ~~or, in the case of an intermediate care~~
26 ~~facility for the developmentally disabled, as required by ss.~~
27 ~~393.067 and 400.062.~~

28 (b) The licensee is closing the facility or has
29 informed the department that it intends to close the facility;
30 and adequate arrangements have not been made for relocation of
31

1 | the residents within 7 days, exclusive of weekends and
2 | holidays, of the closing of the facility.

3 | (c) The agency determines that conditions exist in the
4 | facility which present an imminent danger to the health,
5 | safety, or welfare of the residents of the facility or which
6 | present a substantial probability that death or serious
7 | physical harm would result therefrom. Whenever possible, the
8 | agency shall facilitate the continued operation of the
9 | program.

10 | (d) The licensee cannot meet its financial obligations
11 | to provide food, shelter, care, and utilities. Evidence such
12 | as the issuance of bad checks or the accumulation of
13 | delinquent bills for such items as personnel salaries, food,
14 | drugs, or utilities constitutes prima facie evidence that the
15 | ownership of the facility lacks the financial ability to
16 | operate the home in accordance with the requirements of this
17 | chapter and all rules promulgated thereunder.

18 | (11) Nothing in this section shall be deemed to
19 | relieve any owner, operator, or employee of a facility placed
20 | in receivership of any civil or criminal liability incurred,
21 | or any duty imposed by law, by reason of acts or omissions of
22 | the owner, operator, or employee before the appointment of a
23 | receiver; nor shall anything contained in this section be
24 | construed to suspend during the receivership any obligation of
25 | the owner, operator, or employee for payment of taxes or other
26 | operating and maintenance expenses of the facility or any
27 | obligation of the owner, operator, or employee or any other
28 | person for the payment of mortgages or liens. The owner shall
29 | retain the right to sell or mortgage any facility under
30 | receivership, subject to the approval of the court which
31 | ordered the receivership. ~~A receivership imposed under the~~

1 ~~provisions of this chapter shall be subject to the Resident~~
2 ~~Protection Trust Fund pursuant to s. 400.063. The owner of a~~
3 ~~facility placed in receivership by the court shall be liable~~
4 ~~for all expenses and costs incurred by the Resident Protection~~
5 ~~Trust Fund which occur as a result of the receivership.~~

6 Section 20. Subsections (1), (3), and (5) of section
7 393.068, Florida Statutes, are amended to read:

8 393.068 Family care program.--

9 (1) The family care program is established for the
10 purpose of providing services and support to families and
11 individuals with developmental disabilities in order to
12 maintain the individual in the home environment and avoid
13 costly out-of-home residential placement. Services and support
14 available to families and individuals with developmental
15 disabilities shall emphasize community living and
16 self-determination and enable individuals with developmental
17 disabilities to enjoy typical lifestyles. One way to
18 accomplish this is to recognize that families are the greatest
19 resource available to individuals who have developmental
20 disabilities and must be supported in their role as primary
21 care givers.

22 (3) When it is determined by the agency to be more
23 cost-effective and in the best interest of the client to
24 maintain such client in the home of a direct service provider,
25 the parent or guardian of the client or, if competent, the
26 client may enroll the client in the family care program. The
27 direct service provider of a client enrolled in the family
28 care program shall be reimbursed according to a rate schedule
29 set by the agency, ~~except that-~~ in-home subsidies ~~cited in~~
30 ~~paragraph (2)(d)~~ shall be provided in accordance with
31

1 ~~according to s. 393.0695 and are not subject to any other~~
2 ~~payment method or rate schedule provided for in this section.~~

3 (5) The agency may contract for the provision of any
4 portion of the services required by the program, except for
5 in-home subsidies ~~cited in paragraph (2)(d)~~, which shall be
6 provided pursuant to s. 393.0695. ~~Otherwise, purchase of~~
7 ~~service contracts shall be used~~ whenever the services so
8 provided are more cost-efficient than those provided by the
9 agency.

10 Section 21. Subsection (3) of section 393.0695,
11 Florida Statutes, is amended, and subsection (5) is added to
12 that section, to read:

13 393.0695 Provision of in-home subsidies.--

14 (3) In-home subsidies must be based on an individual
15 determination of need and must not exceed maximum amounts set
16 by the agency and reassessed by the agency quarterly ~~annually~~.

17 (5) The agency shall adopt rules to administer this
18 section, including standards and procedures governing
19 eligibility for services, selection of housing, selection of
20 providers, and planning for services, and requirements for
21 ongoing monitoring.

22 Section 22. Subsection (2) of section 393.075, Florida
23 Statutes, is amended to read:

24 393.075 General liability coverage.--

25 (2) The Division of Risk Management of the Department
26 of Financial Services shall provide coverage through the
27 agency to any person who owns or operates a foster care
28 facility or group home facility solely for the agency, who
29 cares for children placed by ~~developmental services staff of~~
30 the agency, and who is licensed pursuant to s. 393.067 to
31 provide such supervision and care in his or her place of

1 residence. The coverage shall be provided from the general
2 liability account of the State Risk Management Trust Fund.
3 The coverage is limited to general liability claims arising
4 from the provision of supervision and care of children in a
5 foster care facility or group home facility pursuant to an
6 agreement with the agency and pursuant to guidelines
7 established through policy, rule, or statute. Coverage shall
8 be subject to the limits provided in ss. 284.38 and 284.385,
9 and the exclusions set forth therein, together with other
10 exclusions as may be set forth in the certificate of coverage
11 issued by the trust fund. A person covered under the general
12 liability account pursuant to this subsection shall
13 immediately notify the Division of Risk Management of the
14 Department of Financial Services of any potential or actual
15 claim.

16 Section 23. Section 393.11, Florida Statutes, is
17 amended to read:

18 393.11 Involuntary admission to residential
19 services.--

20 (1) JURISDICTION.--When a person who has been
21 determined eligible for services by the agency is mentally
22 retarded and requires involuntary admission to residential
23 services provided by the agency, the circuit court of the
24 county in which the person resides shall have jurisdiction to
25 conduct a hearing and enter an order involuntarily admitting
26 the person in order that the person may receive the care,
27 treatment, habilitation, and rehabilitation which the person
28 needs. For the purpose of identifying mental retardation,
29 diagnostic capability shall be established by the agency. The
30 involuntary commitment of a person with mental retardation or
31 autism who is charged with a felony offense shall be

1 determined in accordance with s. 916.302. ~~Except as otherwise~~
2 ~~specified, the proceedings under this section shall be~~
3 ~~governed by the Florida Rules of Civil Procedure.~~

4 (2) PETITION.--

5 (a) A petition for involuntary admission to
6 residential services may be executed by a petitioning
7 commission. ~~For proposed involuntary admission to residential~~
8 ~~services arising out of chapter 916, the petition may be filed~~
9 ~~by a petitioning commission, the agency, the state attorney of~~
10 ~~the circuit from which the defendant was committed, or the~~
11 ~~defendant's attorney.~~

12 (b) The petitioning commission shall consist of three
13 persons. One of these persons shall be a physician licensed
14 and practicing under chapter 458 or chapter 459.

15 (c) The petition shall be verified and shall:

16 1. State the name, age, and present address of the
17 commissioners and their relationship to the person with mental
18 retardation or autism;

19 2. State the name, age, county of residence, and
20 present address of the person with mental retardation or
21 autism;

22 3. Allege that the commission believes that the person
23 needs involuntary residential services and specify the factual
24 information on which such belief is based;

25 4. Allege that the person lacks sufficient capacity to
26 give express and informed consent to a voluntary application
27 for services and lacks the basic survival and self-care skills
28 to provide for the person's well-being or is likely to
29 physically injure others if allowed to remain at liberty; and
30
31

1 5. State which residential setting is the least
2 restrictive and most appropriate alternative and specify the
3 factual information on which such belief is based.

4 (d) The petition shall be filed in the circuit court
5 of the county in which the person with mental retardation or
6 autism resides.

7 (3) NOTICE.--

8 (a) Notice of the filing of the petition shall be
9 given to the individual and his or her legal guardian. The
10 notice shall be given both verbally and in writing in the
11 language of the client, or in other modes of communication of
12 the client, and in English. Notice shall also be given to such
13 other persons as the court may direct. The petition for
14 involuntary admission to residential services shall be served
15 with the notice.

16 (b) Whenever a motion or petition has been filed
17 pursuant to s. 916.303 to dismiss criminal charges against a
18 defendant with mental retardation or autism, and a petition is
19 filed to involuntarily admit the defendant to residential
20 services under this section, the notice of the filing of the
21 petition shall also be given to the defendant's attorney and
22 to the state attorney of the circuit from which the defendant
23 was committed.

24 (c) The notice shall state that a hearing shall be set
25 to inquire into the need of the person with mental retardation
26 or autism for involuntary residential services. The notice
27 shall also state the date of the hearing on the petition.

28 (d) The notice shall state that the individual with
29 mental retardation or autism has the right to be represented
30 by counsel of his or her own choice and that, if the person
31 cannot afford an attorney, the court shall appoint one.

1 (4) AGENCY DEVELOPMENTAL SERVICES PARTICIPATION.--

2 (a) Upon receiving the petition, the court shall
3 immediately order the developmental services program of the
4 agency to examine the person being considered for involuntary
5 admission to residential services.

6 (b) Following examination, the agency shall file ~~After~~
7 ~~the developmental services program examines the person,~~ a
8 written report ~~shall be filed~~ with the court not less than 10
9 working days before the date of the hearing. The report must
10 ~~shall~~ be served on the petitioner, the person with mental
11 retardation, and the person's attorney at the time the report
12 is filed with the court.

13 (c) The report must ~~shall~~ contain the findings of the
14 agency's developmental services program evaluation and any
15 recommendations deemed appropriate.

16 (5) EXAMINING COMMITTEE.--

17 (a) Upon receiving the petition, the court shall
18 immediately appoint an examining committee to examine the
19 person being considered for involuntary admission to
20 residential services ~~of the developmental services program of~~
21 ~~the agency.~~

22 (b) The court shall appoint no fewer than three
23 disinterested experts who have demonstrated to the court an
24 expertise in the diagnosis, evaluation, and treatment of
25 persons with mental retardation. The committee shall include
26 at least one licensed and qualified physician, one licensed
27 and qualified psychologist, and one qualified professional
28 with a minimum of a masters degree in social work, special
29 education, or vocational rehabilitation counseling, to examine
30 the person and to testify at the hearing on the involuntary
31 admission to residential services.

1 (c) Counsel for the person who is being considered for
2 involuntary admission to residential services and counsel for
3 the petition commission shall have the right to challenge the
4 qualifications of those appointed to the examining committee.

5 (d) Members of the committee shall not be employees of
6 the agency or be associated with each other in practice or in
7 employer-employee relationships. Members of the committee
8 shall not have served as members of the petitioning
9 commission. Members of the committee shall not be employees
10 of the members of the petitioning commission or be associated
11 in practice with members of the commission.

12 (e) The committee shall prepare a written report for
13 the court. The report shall explicitly document the extent
14 that the person meets the criteria for involuntary admission.
15 The report, and expert testimony, shall include, but not be
16 limited to:

- 17 1. The degree of the person's mental retardation;
- 18 2. Whether, because of the person's degree of mental

19 retardation, the person:

20 a. Lacks sufficient capacity to give express and
21 informed consent to a voluntary application for services
22 pursuant to s. 393.065;

23 b. Lacks basic survival and self-care skills to such a
24 degree that close supervision and habilitation in a
25 residential setting is necessary and if not provided would
26 result in a real and present threat of substantial harm to the
27 person's well-being; or

28 c. Is likely to physically injure others if allowed to
29 remain at liberty.

- 30 3. The purpose to be served by residential care;

31

1 4. A recommendation on the type of residential
2 placement which would be the most appropriate and least
3 restrictive for the person; and

4 5. The appropriate care, habilitation, and treatment.

5 (f) The committee shall file the report with the court
6 not less than 10 working days before the date of the hearing.
7 The report shall be served on the petitioner, the person with
8 mental retardation, and the person's attorney at the time the
9 report is filed with the court.

10 (g) Members of the examining committee shall receive a
11 reasonable fee to be determined by the court. The fees are to
12 be paid from the general revenue fund of the county in which
13 the person with mental retardation resided when the petition
14 was filed.

15 (h) The agency shall develop and prescribe by rule one
16 or more standard forms to be used as a guide for members of
17 the examining committee.

18 (6) COUNSEL; GUARDIAN AD LITEM.--

19 (a) The person with mental retardation shall be
20 represented by counsel at all stages of the judicial
21 proceeding. In the event the person is indigent and cannot
22 afford counsel, the court shall appoint a public defender not
23 less than 20 working days before the scheduled hearing. The
24 person's counsel shall have full access to the records of the
25 service provider and the agency. In all cases, the attorney
26 shall represent the rights and legal interests of the person
27 with mental retardation, regardless of who may initiate the
28 proceedings or pay the attorney's fee.

29 (b) If the attorney, during the course of his or her
30 representation, reasonably believes that the person with
31 mental retardation cannot adequately act in his or her own

1 interest, the attorney may seek the appointment of a guardian
2 ad litem. A prior finding of incompetency is not required
3 before a guardian ad litem is appointed pursuant to this
4 section.

5 (7) HEARING.--

6 (a) The hearing for involuntary admission shall be
7 conducted, and the order shall be entered, in the county in
8 which the petition is filed ~~person is residing or be as~~
9 ~~convenient to the person as may be consistent with orderly~~
10 ~~procedure~~. The hearing shall be conducted in a physical

11 setting not likely to be injurious to the person's condition.

12 (b) A hearing on the petition shall be held as soon as
13 practicable after the petition is filed, but reasonable delay
14 for the purpose of investigation, discovery, or procuring
15 counsel or witnesses shall be granted.

16 (c) The court may appoint a general or special
17 magistrate to preside. Except as otherwise specified, the
18 magistrate's proceeding shall be governed by the ~~rule 1.490,~~
19 Florida Rules of Civil Procedure.

20 (d) The person with mental retardation shall be
21 physically present throughout the entire proceeding. If the
22 person's attorney believes that the person's presence at the
23 hearing is not in the person's best interest, the person's
24 presence may be waived once the court has seen the person and
25 the hearing has commenced.

26 (e) The person shall have the right to present
27 evidence and to cross-examine all witnesses and other evidence
28 alleging the appropriateness of the person's admission to
29 residential care. Other relevant and material evidence
30 regarding the appropriateness of the person's admission to
31 residential services; the most appropriate, least restrictive

1 residential placement; and the appropriate care, treatment,
2 and habilitation of the person, including written or oral
3 reports, may be introduced at the hearing by any interested
4 person.

5 (f) The petitioning commission may be represented by
6 counsel at the hearing. The petitioning commission shall have
7 the right to call witnesses, present evidence, cross-examine
8 witnesses, and present argument on behalf of the petitioning
9 commission.

10 (g) All evidence shall be presented according to
11 chapter 90. The burden of proof shall be on the party
12 alleging the appropriateness of the person's admission to
13 residential services. The burden of proof shall be by clear
14 and convincing evidence.

15 (h) All stages of each proceeding shall be
16 stenographically reported.

17 (8) ORDER.--

18 (a) In all cases, the court shall issue written
19 findings of fact and conclusions of law to support its
20 decision. The order shall state the basis for such findings
21 of fact.

22 (b) An order of involuntary admission to residential
23 services shall not be entered unless the court finds that:

- 24 1. The person is mentally retarded or autistic;
- 25 2. Placement in a residential setting is the least
26 restrictive and most appropriate alternative to meet the
27 person's needs; and
- 28 3. Because of the person's degree of mental
29 retardation or autism, the person:

30 a. Lacks sufficient capacity to give express and
31 informed consent to a voluntary application for services

1 | pursuant to s. 393.065 and lacks basic survival and self-care
2 | skills to such a degree that close supervision and
3 | habilitation in a residential setting is necessary and, if not
4 | provided, would result in a real and present threat of
5 | substantial harm to the person's well-being; or

6 | b. Is likely to physically injure others if allowed to
7 | remain at liberty.

8 | (c) If the evidence presented to the court is not
9 | sufficient to warrant involuntary admission to residential
10 | services, but the court feels that residential services would
11 | be beneficial, the court may recommend that the person seek
12 | voluntary admission.

13 | (d) If an order of involuntary admission to
14 | residential services provided by the ~~developmental services~~
15 | ~~program of the~~ agency is entered by the court, a copy of the
16 | written order shall be served upon the person, the person's
17 | counsel, the agency, and the state attorney and the person's
18 | defense counsel, if applicable. The order of involuntary
19 | admission sent to the agency shall also be accompanied by a
20 | copy of the examining committee's report and other reports
21 | contained in the court file.

22 | (e) Upon receiving the order, the agency shall, within
23 | 45 days, provide the court with a copy of the person's family
24 | or individual support plan and copies of all examinations and
25 | evaluations, outlining the treatment and rehabilitative
26 | programs. The agency shall document that the person has been
27 | placed in the most appropriate, least restrictive and
28 | cost-beneficial residential setting ~~facility~~. A copy of the
29 | family or individual support plan and other examinations and
30 | evaluations shall be served upon the person and the person's
31 |

1 | counsel at the same time the documents are filed with the
2 | court.

3 | (9) EFFECT OF THE ORDER OF INVOLUNTARY ADMISSION TO
4 | RESIDENTIAL SERVICES.--

5 | (a) In no case shall an order authorizing an admission
6 | to residential care be considered an adjudication of mental
7 | incompetency. No person shall be presumed incompetent solely
8 | by reason of the person's involuntary admission to residential
9 | services. No person shall be denied the full exercise of all
10 | legal rights guaranteed to citizens of this state and of the
11 | United States.

12 | (b) Any minor involuntarily admitted to residential
13 | services shall, upon reaching majority, be given a hearing to
14 | determine the continued appropriateness of his or her
15 | involuntary admission.

16 | (10) COMPETENCY.--

17 | (a) The issue of competency shall be separate and
18 | distinct from a determination of the appropriateness of
19 | involuntary admission to residential services for a condition
20 | of mental retardation.

21 | (b) The issue of the competency of a person with
22 | mental retardation for purposes of assigning guardianship
23 | shall be determined in a separate proceeding according to the
24 | procedures and requirements of chapter 744 ~~and the Florida~~
25 | ~~Probate Rules.~~ The issue of the competency of a person with
26 | mental retardation or autism for purposes of determining
27 | whether the person is competent to proceed in a criminal trial
28 | shall be determined in accordance with chapter 916.

29 | (11) CONTINUING JURISDICTION.--The court which issues
30 | the initial order for involuntary admission to residential
31 | services under this section shall have continuing jurisdiction

1 to enter further orders to ensure that the person is receiving
2 adequate care, treatment, habilitation, and rehabilitation,
3 including psychotropic medication and behavioral programming.
4 Upon request, the court may transfer the continuing
5 jurisdiction to the court where a client resides if it is
6 different from where the original involuntary admission order
7 was issued. No person may be released from an order for
8 involuntary admission to residential services except by the
9 order of the court.

10 (12) APPEAL.--

11 (a) Any party to the proceeding who is affected by an
12 order of the court may appeal to the appropriate district
13 court of appeal within the time and in the manner prescribed
14 by the Florida Rules of Appellate Procedure.

15 (b) The filing of an appeal by the person with mental
16 retardation shall stay admission of the person into
17 residential care. The stay shall remain in effect during the
18 pendency of all review proceedings in Florida courts until a
19 mandate issues.

20 (13) HABEAS CORPUS.--At any time and without notice,
21 any person involuntarily admitted into residential care ~~to the~~
22 ~~developmental services program of the agency~~, or the person's
23 parent or legal guardian in his or her behalf, is entitled to
24 file a petition for a writ of habeas corpus to question the
25 cause, legality, and appropriateness of the person's
26 involuntary admission. Each person, or the person's parent or
27 legal guardian, shall receive specific written notice of the
28 right to petition for a writ of habeas corpus at the time of
29 his or her involuntary placement.

30 Section 24. Section 393.122, Florida Statutes, is
31 amended to read:

1 393.122 Applications for continued residential
2 services.--

3 (1) If a client is discharged from residential
4 services under the provisions of s. 393.115 ~~this section~~,
5 application for needed services shall be encouraged.

6 (2) ~~A No~~ client receiving services from a state agency
7 ~~may not the department as of July 1, 1977, shall~~ be denied
8 continued services due to any change in eligibility
9 requirements by chapter 77-335, Laws of Florida.

10 Section 25. Section 393.125, Florida Statutes, is
11 amended to read:

12 393.125 Hearing rights.--

13 (1) REVIEW OF AGENCY DECISIONS.--

14 (a) Any developmental disabilities services applicant
15 or client, or his or her parent, guardian, guardian advocate,
16 or authorized representative, whose substantial interests have
17 been ~~who has any substantial interest~~ determined by the
18 agency, has the right to request an administrative hearing
19 pursuant to ss. 120.569 and 120.57. An entity or person who is
20 a paid service provider for the applicant or client may not
21 act as an authorized representative for the applicant or
22 client.

23 (b) Notice of the right to an administrative hearing
24 shall be given, ~~both verbally and~~ in writing, to the applicant
25 or client, and his or her parent, guardian, guardian advocate,
26 or other authorized representative, at the same time that the
27 agency gives the applicant or client written notice of the
28 agency's action. The notice shall be given, ~~both verbally and~~
29 in writing, in the language of the client or applicant and in
30 English.

31

1 (c) A request for a hearing under this section shall
2 be made to the agency, verbally or in writing, within 30 days
3 of the applicant's or client's receipt of the notice.

4 (2) REVIEW OF PROVIDER DECISIONS.--The agency shall
5 adopt rules to establish uniform guidelines for the agency and
6 service providers relevant to termination, suspension, or
7 reduction of client services by the service provider. ~~The~~
8 ~~rules shall ensure the due process rights of service providers~~
9 ~~and clients.~~

10 Section 26. Section 393.13, Florida Statutes, is
11 amended to read:

12 393.13 ~~Personal~~ Treatment of persons ~~who are~~
13 ~~developmentally disabled.~~--

14 (1) SHORT TITLE.--This section act shall be known as
15 "The Bill of Rights of Persons Who are Developmentally
16 Disabled."

17 (2) LEGISLATIVE INTENT.--

18 (a) The Legislature finds and declares that the system
19 of care provided to individuals who are developmentally
20 disabled must be designed to meet the needs of the clients as
21 well as protect the integrity of their legal and human rights.

22 (b) The Legislature further finds and declares that
23 the design and delivery of treatment and services to persons
24 with developmental disabilities ~~who are developmentally~~
25 ~~disabled~~ should be directed by the principles of
26 self-determination ~~normalization~~ and therefore should:

- 27 1. Abate the use of large institutions.
- 28 2. Continue the development of community-based
29 services that ~~which~~ provide reasonable alternatives to
30 institutionalization in settings that are least restrictive to
31 the client.

1 3. Provide training and education that ~~to individuals~~
2 ~~who are developmentally disabled which~~ will maximize their
3 potential to lead independent and productive lives and that
4 ~~which~~ will afford opportunities for outward mobility from
5 institutions.

6 4. Reduce the use of sheltered workshops and other
7 noncompetitive employment day activities and promote
8 opportunities for those ~~gainful employment for persons with~~
9 ~~developmental disabilities~~ who choose to seek such employment.

10 (c) It is the intent of the Legislature that
11 duplicative and unnecessary administrative procedures and
12 practices shall be eliminated, and areas of responsibility
13 shall be clearly defined and consolidated in order to
14 economically utilize present resources. Furthermore,
15 personnel providing services should be sufficiently qualified
16 and experienced to meet the needs of the clients, and they
17 must be sufficient in number to provide treatment in a manner
18 which is beneficial to the clients.

19 (d) It is the intent of the Legislature:

20 1. To articulate the existing legal and human rights
21 of persons with developmental disabilities ~~who are~~
22 ~~developmentally disabled~~ so that they may be exercised and
23 protected. Persons with developmental disabilities shall have
24 all the rights enjoyed by citizens of the state and the United
25 States.

26 2. To provide a mechanism for the identification,
27 evaluation, and treatment of persons with developmental
28 disabilities.

29 3. To divert those individuals from institutional
30 commitment who, by virtue of comprehensive assessment, can be
31

1 placed in less costly, more effective community environments
2 and programs.

3 4. To fund improvements in the program in accordance
4 with the availability of state resources and yearly priorities
5 determined by the Legislature.

6 5. To ensure that persons with developmental
7 disabilities receive treatment and habilitation which fosters
8 the developmental potential of the individual.

9 6. To provide programs for the proper habilitation and
10 treatment of persons with developmental disabilities which
11 shall include, but not be limited to, comprehensive
12 medical/dental care, education, recreation, specialized
13 therapies, training, social services, transportation,
14 guardianship, family care programs, day habilitation services,
15 and habilitative and rehabilitative services suited to the
16 needs of the individual regardless of age, degree of
17 disability, or handicapping condition. ~~No person with
18 developmental disabilities shall be deprived of these
19 enumerated services by reason of inability to pay.~~

20 7. To fully effectuate the principles of
21 self-determination ~~normalization principle~~ through the
22 establishment of community services for persons with
23 developmental disabilities as a viable and practical
24 alternative to institutional care at each stage of individual
25 life development. If care in a residential facility becomes
26 necessary, it shall be in the least restrictive setting.

27 (e) It is the clear, unequivocal intent of this act to
28 guarantee individual dignity, liberty, pursuit of happiness,
29 and protection of the civil and legal rights of persons with
30 developmental disabilities.

31

1 (3) RIGHTS OF ALL PERSONS WITH DEVELOPMENTAL
2 DISABILITIES.--The rights described in this subsection shall
3 apply to all persons with developmental disabilities, whether
4 or not such persons are clients of the agency.

5 (a) Persons with developmental disabilities shall have
6 a right to dignity, privacy, and humane care, including the
7 right to be free from sexual abuse in residential facilities.

8 (b) Persons with developmental disabilities shall have
9 the right to religious freedom and practice. Nothing shall
10 restrict or infringe on a person's right to religious
11 preference and practice.

12 (c) Persons with developmental disabilities shall
13 receive services, within available sources, which protect the
14 personal liberty of the individual and which are provided in
15 the least restrictive conditions necessary to achieve the
16 purpose of treatment.

17 (d) Persons who are developmentally disabled shall
18 have a right to participate in an appropriate program of
19 quality education and training services, within available
20 resources, regardless of chronological age or degree of
21 disability. Such persons may be provided with instruction in
22 sex education, marriage, and family planning.

23 (e) Persons who are developmentally disabled shall
24 have a right to social interaction and to participate in
25 community activities.

26 (f) Persons who are developmentally disabled shall
27 have a right to physical exercise and recreational
28 opportunities.

29 (g) Persons who are developmentally disabled shall
30 have a right to be free from harm, including unnecessary
31

1 physical, chemical, or mechanical restraint, isolation,
2 excessive medication, abuse, or neglect.

3 (h) Persons who are developmentally disabled shall
4 have a right to consent to or refuse treatment, subject to the
5 provisions of s. 393.12(2)(a) or chapter 744.

6 (i) No otherwise qualified person shall, by reason of
7 having a developmental disability, be excluded from
8 participation in, or be denied the benefits of, or be subject
9 to discrimination under, any program or activity which
10 receives public funds, and all prohibitions set forth under
11 any other statute shall be actionable under this statute.

12 (j) No otherwise qualified person shall, by reason of
13 having a developmental disability, be denied the right to vote
14 in public elections.

15 (4) CLIENT RIGHTS.--For purposes of this subsection,
16 the term "client," as defined in s. 393.063, shall also
17 include any person served in a facility licensed pursuant to
18 s. 393.067.

19 (a) Clients shall have an unrestricted right to
20 communication:

21 1. Each client shall be allowed to receive, send, and
22 mail sealed, unopened correspondence. No client's incoming or
23 outgoing correspondence shall be opened, delayed, held, or
24 censored by the facility unless there is reason to believe
25 that it contains items or substances which may be harmful to
26 the client or others, in which case the chief administrator of
27 the facility may direct reasonable examination of such mail
28 and regulate the disposition of such items or substances.

29 2. Clients in residential facilities shall be afforded
30 reasonable opportunities for telephone communication, to make
31 and receive confidential calls, unless there is reason to

1 | believe that the content of the telephone communication may be
2 | harmful to the client or others, in which case the chief
3 | administrator of the facility may direct reasonable
4 | observation and monitoring to the telephone communication.

5 | 3. Clients shall have an unrestricted right to
6 | visitation subject to reasonable rules of the facility.
7 | However, nothing in this provision shall be construed to
8 | permit infringement upon other clients' rights to privacy.

9 | (b) Each client has the right to the possession and
10 | use of his or her own clothing and personal effects, except in
11 | those specific instances where the use of some of these items
12 | as reinforcers is essential for training the client as part of
13 | an appropriately approved behavioral program. The chief
14 | administrator of the facility may take temporary custody of
15 | such effects when it is essential to do so for medical or
16 | safety reasons. Custody of such personal effects shall be
17 | promptly recorded in the client's record, and a receipt for
18 | such effects shall be immediately given to the client, if
19 | competent, or the client's parent or legal guardian.

20 | 1. All money belonging to a client held by the agency
21 | shall be held in compliance with s. 402.17(2).

22 | 2. All interest on money received and held for the
23 | personal use and benefit of a client shall be the property of
24 | that client and shall not accrue to the general welfare of all
25 | clients or be used to defray the cost of residential care.
26 | Interest so accrued shall be used or conserved for the
27 | personal use or benefit of the individual client as provided
28 | in s. 402.17(2).

29 | 3. Upon the discharge or death of a client, a final
30 | accounting shall be made of all personal effects and money
31 | belonging to the client held by the agency. All such personal

1 effects and money, including interest, shall be promptly
2 turned over to the client or his or her heirs.

3 (c) Each client shall receive prompt and appropriate
4 medical treatment and care for physical and mental ailments
5 and for the prevention of any illness or disability. Medical
6 treatment shall be consistent with the accepted standards of
7 medical practice in the community.

8 1. Medication shall be administered only at the
9 written order of a physician. Medication shall not be used as
10 punishment, for the convenience of staff, as a substitute for
11 implementation of an individual or family support plan or
12 behavior-analysis services ~~behavior modification programming,~~
13 or in unnecessary or excessive quantities.

14 2. Daily notation of medication received by each
15 client in a residential facility shall be kept in the client's
16 record.

17 3. Periodically, but no less frequently than every 6
18 months, the drug regimen of each client in a residential
19 facility shall be reviewed by the attending physician or other
20 appropriate monitoring body, consistent with appropriate
21 standards of medical practice. All prescriptions shall have a
22 termination date.

23 4. When pharmacy services are provided at any
24 residential facility, such services shall be directed or
25 supervised by a professionally competent pharmacist licensed
26 according to the provisions of chapter 465.

27 5. Pharmacy services shall be delivered in accordance
28 with the provisions of chapter 465.

29 6. Prior to instituting a plan of experimental medical
30 treatment or carrying out any necessary surgical procedure,
31 express and informed consent shall be obtained from the

1 client, if competent, or the client's parent or legal
2 guardian. Information upon which the client shall make
3 necessary treatment and surgery decisions shall include, but
4 not be limited to:

5 a. The nature and consequences of such procedures.
6 b. The risks, benefits, and purposes of such
7 procedures.
8 c. Alternate procedures available.

9 7. When the parent or legal guardian of the client is
10 unknown or unlocatable and the physician is unwilling to
11 perform surgery based solely on the client's consent, a court
12 of competent jurisdiction shall hold a hearing to determine
13 the appropriateness of the surgical procedure. The client
14 shall be physically present, unless the client's medical
15 condition precludes such presence, represented by counsel, and
16 provided the right and opportunity to be confronted with, and
17 to cross-examine, all witnesses alleging the appropriateness
18 of such procedure. In such proceedings, the burden of proof by
19 clear and convincing evidence shall be on the party alleging
20 the appropriateness of such procedures. The express and
21 informed consent of a person described in subparagraph 6. may
22 be withdrawn at any time, with or without cause, prior to
23 treatment or surgery.

24 8. The absence of express and informed consent
25 notwithstanding, a licensed and qualified physician may render
26 emergency medical care or treatment to any client who has been
27 injured or who is suffering from an acute illness, disease, or
28 condition if, within a reasonable degree of medical certainty,
29 delay in initiation of emergency medical care or treatment
30 would endanger the health of the client.
31

1 (d) Each client shall have access to individual
2 storage space for his or her private use.

3 (e) Each client shall be provided with appropriate
4 physical exercise as prescribed in the client's individual or
5 family support plan. Indoor and outdoor facilities and
6 equipment for such physical exercise shall be provided.

7 (f) Each client shall receive humane discipline.

8 (g) No client shall be subjected to a treatment
9 program to eliminate bizarre or unusual behaviors without
10 first being examined by a physician who in his or her best
11 judgment determines that such behaviors are not organically
12 caused.

13 1. Treatment programs involving the use of noxious or
14 painful stimuli shall be prohibited.

15 2. All alleged violations of this paragraph shall be
16 reported immediately to the chief administrative officer of
17 the facility and ~~or the district administrator,~~ the agency
18 ~~head, and the Florida local advocacy council.~~ A thorough
19 investigation of each incident shall be conducted and a
20 written report of the finding and results of such
21 investigation shall be submitted to the chief administrative
22 officer of the facility ~~or the district administrator~~ and ~~to~~
23 the agency ~~head~~ within 24 hours after ~~of~~ the occurrence or
24 discovery of the incident.

25 3. The agency shall adopt by rule a system for the
26 oversight of behavioral programs. Such system shall establish
27 guidelines and procedures governing the design, approval,
28 implementation, and monitoring of all behavioral programs
29 involving clients, including any program or facility using
30 physical restraints or seclusion. The system shall ensure
31 statewide and local review by committees of professionals

1 certified as behavior analysts pursuant to s. 393.17. No
2 behavioral program shall be implemented unless reviewed
3 according to the rules established by the agency under this
4 section. ~~Nothing stated in this section shall prohibit the~~
5 ~~review of programs by the Florida statewide or local advocacy~~
6 ~~councils.~~

7 (h) Each client engaged in work programs which require
8 compliance with federal wage and hour laws shall be provided
9 with minimum wage protection and fair compensation for labor
10 in accordance with the federal wage-per-hour regulations.

11 (i) Clients shall have the right to be free from
12 unnecessary physical, chemical, or mechanical restraint.
13 Restraints shall be employed only in emergencies or to protect
14 the client from imminent injury to himself or herself or
15 others. Restraints shall not be employed as punishment, for
16 the convenience of staff, or as a substitute for a
17 habilitative plan. Restraints shall impose the least possible
18 restrictions consistent with their purpose and shall be
19 removed when the emergency ends. Restraints shall not cause
20 physical injury to the client and shall be designed to allow
21 the greatest possible comfort.

22 1. Mechanical supports used in normative situations to
23 achieve proper body position and balance shall not be
24 considered restraints, but shall be prescriptively designed
25 and applied under the supervision of a qualified professional
26 with concern for principles of good body alignment,
27 circulation, and allowance for change of position.

28 2. Totally enclosed cribs and barred enclosures shall
29 be considered restraints.

30 3. Daily reports on the employment of physical,
31 chemical, or mechanical restraints by those specialists

1 authorized in the use of such restraints shall be made to the
2 appropriate chief administrator of the facility, and a monthly
3 summary of such reports shall be relayed to the agency
4 ~~district administrator and the Florida local advocacy council.~~
5 The reports shall summarize all such cases of restraints, the
6 type used, the duration of usage, and the reasons therefor.
7 ~~Districts shall submit districtwide quarterly reports of these~~
8 ~~summaries to the state Developmental Disabilities Program~~
9 ~~Office.~~

10 4. The agency shall adopt by rule standards and
11 procedures governing the use of restraints ~~post a copy of the~~
12 ~~rules adopted under this section in each living unit of~~
13 ~~residential facilities.~~ A copy of the rules adopted under this
14 subparagraph ~~section~~ shall be given to the client, parent,
15 guardian or guardian advocate, and all staff members of
16 ~~licensed~~ facilities and programs licensed under this chapter
17 and shall be made a part of all staff preservice and inservice
18 training programs.

19 (j)~~1-~~ Each client shall have a central record. The
20 central record shall be established by the agency at the time
21 that an individual is determined eligible for services, shall
22 be maintained by the client's support coordinator, and must
23 contain information ~~include data~~ pertaining to admission,
24 diagnosis and treatment history, present condition, and such
25 other information as may be required ~~under rules of the~~
26 ~~agency.~~ The central record is the property of the agency.

27 ~~1.2-~~ Unless waived by the client, if competent, or the
28 client's parent or legal guardian if the client is
29 incompetent, the client's central record shall be confidential
30 and exempt from the provisions of s. 119.07(1), and no part of
31 it shall be released except:

1 a. The record may be released to physicians,
2 attorneys, and government agencies having need of the record
3 to aid the client, as designated by the client, if competent,
4 or the client's parent or legal guardian, if the client is
5 incompetent.

6 b. The record shall be produced in response to a
7 subpoena or released to persons authorized by order of court,
8 excluding matters privileged by other provisions of law.

9 c. The record or any part thereof may be disclosed to
10 a qualified researcher, a staff member of the facility where
11 the client resides, or an employee of the agency when the
12 administrator of the facility or the director of the agency
13 deems it necessary for the treatment of the client,
14 maintenance of adequate records, compilation of treatment
15 data, or evaluation of programs.

16 d. Information from the records may be used for
17 statistical and research purposes if the information is
18 abstracted in such a way to protect the identity of
19 individuals.

20 ~~3. All central records for each client in residential~~
21 ~~facilities shall be kept on uniform forms distributed by the~~
22 ~~agency. The central record shall accurately summarize each~~
23 ~~client's history and present condition.~~

24 ~~2.4.~~ The client, if competent, or the client's parent
25 or legal guardian if the client is incompetent, shall be
26 supplied with a copy of the client's central record upon
27 request.

28 (k) Each client residing in a residential facility who
29 is eligible to vote in public elections according to the laws
30 of the state shall have the right to vote. Facilities
31

1 operators shall arrange the means to exercise the client's
2 right to vote.

3 (5) LIABILITY FOR VIOLATIONS.--Any person who violates
4 or abuses any rights or privileges of persons who are
5 developmentally disabled provided by this act shall be liable
6 for damages as determined by law. Any person who acts in good
7 faith compliance with the provisions of this act shall be
8 immune from civil or criminal liability for actions in
9 connection with evaluation, admission, habilitative
10 programming, education, treatment, or discharge of a client.
11 However, this section shall not relieve any person from
12 liability if such person is guilty of negligence, misfeasance,
13 nonfeasance, or malfeasance.

14 (6) NOTICE OF RIGHTS.--Each person with developmental
15 disabilities, if competent, or parent or legal guardian of
16 such person if the person is incompetent, shall promptly
17 receive from the agency or the Department of Education a
18 written copy of this act. Each person with developmental
19 disabilities able to comprehend shall be promptly informed, in
20 the language or other mode of communication which such person
21 understands, of the above legal rights of persons with
22 developmental disabilities.

23 (7) RESIDENT GOVERNMENT.--Each residential facility
24 providing services to clients who are desirous and capable of
25 participating shall initiate and develop a program of resident
26 government to hear the views and represent the interests of
27 all clients served by the facility. The resident government
28 shall be composed of residents elected by other residents and
29 staff advisers skilled in the administration of community
30 organizations, ~~and a representative of the Florida local~~
31 ~~advocacy council. The resident government shall work closely~~

1 ~~with the Florida local advocacy council and the district~~
2 ~~administrator to promote the interests and welfare of all~~
3 ~~residents in the facility.~~

4 Section 27. Subsections (1), (2), (3), (4), and (5) of
5 section 393.135, Florida Statutes, are amended to read:

6 393.135 Sexual misconduct prohibited; reporting
7 required; penalties.--

8 (1) As used in this section, the term:

9 (a) "Employee" includes any paid staff member,
10 volunteer, or intern of the agency ~~or the department~~; any
11 person under contract with the agency ~~or the department~~; and
12 any person providing care or support to a client on behalf of
13 the agency ~~department~~ or its providers.

14 (b) "Sexual activity" means:

15 1. Fondling the genital area, groin, inner thighs,
16 buttocks, or breasts of a person.

17 2. The oral, anal, or vaginal penetration by or union
18 with the sexual organ of another or the anal or vaginal
19 penetration of another by any other object.

20 3. Intentionally touching in a lewd or lascivious
21 manner the breasts, genitals, the genital area, or buttocks,
22 or the clothing covering them, of a person, or forcing or
23 enticing a person to touch the perpetrator.

24 4. Intentionally masturbating in the presence of
25 another person.

26 5. Intentionally exposing the genitals in a lewd or
27 lascivious manner in the presence of another person.

28 6. Intentionally committing any other sexual act that
29 does not involve actual physical or sexual contact with the
30 victim, including, but not limited to, sadomasochistic abuse,
31

1 sexual bestiality, or the simulation of any act involving
2 sexual activity in the presence of a victim.

3 (c) "Sexual misconduct" means any sexual activity
4 between an employee and a client to whom the employee renders
5 services, care, or support on behalf of the agency or its
6 providers, or between the employee and another client who
7 lives in the same home as the client to whom the employee is
8 rendering the services, care, or support, regardless of the
9 consent of the client. The term does not include an act done
10 for a bona fide medical purpose or an internal search
11 conducted in the lawful performance of duty by an employee.

12 (2) An employee who engages in sexual misconduct with
13 an individual with a developmental disability who:

14 ~~(a) Is in the custody of the department;~~

15 ~~(a)(b)~~ Resides in a residential facility, including
16 any comprehensive transitional education program,
17 developmental disabilities ~~services~~ institution, foster care
18 facility, group home facility, intermediate care facility for
19 the developmentally disabled, or residential habilitation
20 center; or

21 ~~(b)(c)~~ Is eligible to receive ~~Receives~~ services from
22 the agency under this chapter ~~a family care program,~~

23
24 commits a felony of the second degree, punishable as provided
25 in s. 775.082, s. 775.083, or s. 775.084. An employee may be
26 found guilty of violating this subsection without having
27 committed the crime of sexual battery.

28 (3) The consent of the client to sexual activity is
29 not a defense to prosecution under this section.

30 (4) This section does not apply to an employee who+

31 ~~(a) is legally married to the client; or~~

1 ~~(b) Has no reason to believe that the person with whom~~
2 ~~the employee engaged in sexual misconduct is a client~~
3 ~~receiving services as described in subsection (2).~~

4 (5) An employee who witnesses sexual misconduct, or
5 who otherwise knows or has reasonable cause to suspect that a
6 person has engaged in sexual misconduct, shall immediately
7 report the incident to the ~~department's~~ central abuse hotline
8 of the Department of Children and Family Services and to the
9 appropriate local law enforcement agency. Such employee shall
10 also prepare, date, and sign an independent report that
11 specifically describes the nature of the sexual misconduct,
12 the location and time of the incident, and the persons
13 involved. The employee shall deliver the report to the
14 supervisor or program director, who is responsible for
15 providing copies to the agency's local office and the agency's
16 ~~department's~~ inspector general. ~~The inspector general shall~~
17 ~~immediately conduct an appropriate administrative~~
18 ~~investigation, and, if there is probable cause to believe that~~
19 ~~sexual misconduct has occurred, the inspector general shall~~
20 ~~notify the state attorney in the circuit in which the incident~~
21 ~~occurred.~~

22 Section 28. Section 393.15, Florida Statutes, is
23 amended to read:

24 393.15 Legislative intent; Community Resources
25 Development Loan Program Trust Fund.--

26 (1) The Legislature finds and declares that the
27 development of community-based treatment facilities for
28 persons with developmental disabilities ~~who are~~
29 ~~developmentally disabled~~ is desirable and recommended and
30 should be encouraged and fostered by the state. The
31 Legislature further recognizes that the development of such

1 facilities is financially difficult for private individuals,
2 due to initial expenditures required to adapt existing
3 structures to the special needs of such persons ~~who are~~
4 ~~developmentally disabled~~ who may be served in community-based
5 foster care, group home, ~~developmental training,~~ and supported
6 employment programs. Therefore, ~~it is the intent of the~~
7 Legislature intends that the agency by this act to develop and
8 administer a loan program ~~trust fund~~ to provide support and
9 encouragement in the establishment of community-based foster
10 care, group home, ~~developmental training,~~ and supported
11 employment programs for persons with developmental
12 disabilities ~~who are developmentally disabled.~~

13 ~~(2) As used in this section, a foster care, group~~
14 ~~home, developmental training, or supported employment program~~
15 ~~may not be a for profit corporation, but may be a nonprofit~~
16 ~~corporation, partnership, or sole proprietorship.~~

17 ~~(2)(3)~~ There is created a Community Resources
18 Development Loan Program in Trust Fund in the State Treasury
19 ~~to be used by~~ the agency for the purpose of granting loans to
20 eligible programs for the initial costs of development of the
21 programs. In order to be eligible for the program, a foster
22 home, group home, or supported employment program must:

23 (a) Serve persons with developmental disabilities;

24 (b) Be a nonprofit corporation, partnership, or sole
25 proprietorship; and

26 (c) Be ~~Loans shall be made only to those facilities~~
27 ~~which are~~ in compliance with the zoning regulations of the
28 local community.

29 (3) Loans may be made to pay for the costs of
30 development and ~~may include~~ structural modification, the
31 purchase of equipment and fire and safety devices,

1 preoperational staff training, and the purchase of insurance.
2 Such costs ~~may shall~~ not include the actual construction of a
3 facility and may not be in lieu of payment for maintenance,
4 client services, or care provided.

5 (4) The agency may grant to an eligible program a
6 lump-sum loan in one payment not to exceed the cost ~~to the~~
7 ~~program~~ of providing 2 months' services, care, or maintenance
8 to each person who is developmentally disabled to be placed in
9 the program by the agency, or the actual cost of firesafety
10 renovations to a facility required by the state, whichever is
11 greater. ~~Loans granted to programs shall not be in lieu of~~
12 ~~payment for maintenance, services, or care provided, but shall~~
13 ~~stand separate and distinct.~~

14 (5) The agency shall adopt rules, ~~as provided in~~
15 ~~chapter 120,~~ to determine the criteria standards under which a
16 program shall be eligible to receive a loan ~~as provided in~~
17 ~~this section~~ and the methodology criteria for the equitable
18 allocation of loan trust funds when eligible applications
19 exceed the funds available.

20 (6)~~(5)~~ Any loan granted by the agency under this
21 section shall be repaid by the program within 5 years and the
22 amount paid shall be deposited into the agency's
23 Administrative Trust Fund. Moneys repaid shall be used to fund
24 new loans. A program that operates as a nonprofit corporation
25 meeting the requirements of s. 501(c)(3) of the Internal
26 Revenue Code, and that seeks forgiveness of its loan shall
27 submit to the agency an annual ~~a~~ statement setting forth the
28 service it has provided during the year together with such
29 other information as the agency by rule shall require, and,
30 upon approval of each such annual statement, the agency may
31

1 ~~shall~~ forgive up to 20 percent of the principal of any such
2 loan granted ~~after June 30, 1975.~~

3 ~~(7)(6)~~ If any program that has received a loan under
4 this section ceases to accept, or provide care, services, or
5 maintenance to persons placed in the program by the
6 department, or if such program files papers of bankruptcy, at
7 that point in time the loan shall become an interest-bearing
8 loan at the rate of 5 percent per annum on the entire amount
9 of the initial loan which shall be repaid within a 1-year
10 period from the date on which the program ceases to provide
11 care, services, or maintenance, or files papers in bankruptcy,
12 and the amount of the loan due plus interest shall constitute
13 a lien in favor of the state against all real and personal
14 property of the program. The lien shall be perfected by the
15 appropriate officer of the agency by executing and
16 acknowledging a statement of the name of the program and the
17 amount due on the loan and a copy of the promissory note,
18 which shall be recorded by the agency with the clerk of the
19 circuit court in the county wherein the program is located. If
20 the program has filed a petition for bankruptcy, the agency
21 shall file and enforce the lien in the bankruptcy proceedings.
22 Otherwise, the lien shall be enforced in the manner provided
23 in s. 85.011. All funds received by the agency from the
24 enforcement of the lien shall be deposited in the agency's
25 Administrative Community Resources Development Trust Fund and
26 used to fund new loans.

27 Section 29. Section 393.17, Florida Statutes, is
28 amended to read:

29 393.17 ~~Behavioral programs;~~ Certification programs ~~of~~
30 ~~behavior analysts.--~~

1 (1) The agency may establish certification programs in
2 order to ensure that only qualified employees and service
3 providers provide client services. Such programs shall be
4 established by rule and must include criteria for the scope of
5 practice; qualifications for certification, including training
6 and testing requirements; continuing education requirements
7 for ongoing certification; standards of performance; and
8 decertification procedures to be used to determine when an
9 individual no longer meets the qualifications for
10 certification or performance standards, including procedures
11 to implement the decertification of an employee or service
12 provider.

13 (2) As provided in subsection (1), the agency shall
14 establish a certification program for behavior analysts and
15 may recognize the certification of behavior analysts awarded
16 by a nonprofit corporation that adheres to the national
17 standards of boards setting professional credentials and whose
18 mission is to meet professional credentialing needs identified
19 by behavior analysts, state governments, and consumers of
20 behavior analysis services and whose work has the support of
21 the Association for Behavior Analysis International. The
22 certification program recognized by the agency must undergo
23 regular psychometric review and validation pursuant to a
24 job-analysis survey of the profession and standards
25 established by content experts in the field.

26 Section 30. Section 393.18, Florida Statutes, is
27 created to read:

28 393.18 Comprehensive transitional education
29 program.--A comprehensive transition education program is a
30 group of jointly operating centers or units, the collective
31 purpose of which is to provide a sequential series of

1 educational care, training, treatment, habilitation, and
2 rehabilitation services to persons who have developmental
3 disabilities and who have severe or moderate maladaptive
4 behaviors. However, this section does not require such
5 programs to provide services only to persons with
6 developmental disabilities. All such services shall be
7 temporary in nature and delivered in a structured residential
8 setting, having the primary goal of incorporating the
9 principle of self-determination in establishing permanent
10 residence for persons with maladaptive behaviors in facilities
11 that are not associated with the comprehensive transitional
12 education program. The staff shall include psychologists and
13 teachers who shall be available to provide services in each
14 component center or unit of the program. The psychologists
15 shall be individuals who are licensed in this state and
16 certified as behavior analysts in this state or individuals
17 who are certified as behavior analysts pursuant to s. 393.17.

18 (1) Comprehensive transitional education programs
19 shall include a minimum of two component centers or units, one
20 of which shall be an intensive treatment and educational
21 center or a transitional training and educational center,
22 which provides services to persons with maladaptive behaviors
23 in the following sequential order:

24 (a) Intensive treatment and educational center.--This
25 component is a self-contained residential unit providing
26 intensive psychological and educational programming for
27 persons with severe maladaptive behaviors, whose behaviors
28 preclude placement in a less-restrictive environment due to
29 the threat of danger or injury to themselves or others.

30 (b) Transitional training and educational
31 center.--This component is a residential unit for persons with

1 moderate maladaptive behaviors, providing concentrated
2 psychological and educational programming that emphasizes a
3 transition toward a less-restrictive environment.

4 (c) Community transition residence.--This component is
5 a residential center providing educational programs and any
6 support services, training, and care that are needed to assist
7 persons with maladaptive behaviors to avoid regression to more
8 restrictive environments, while preparing them for more
9 independent living. Continuous-shift staff shall be required
10 for this component.

11 (d) Alternative living center.--This component is a
12 residential unit providing an educational and family living
13 environment for persons with maladaptive behaviors in a
14 moderately unrestricted setting. Residential staff shall be
15 required for this component.

16 (e) Independent living education center.--This
17 component is a facility providing a family living environment
18 for persons with maladaptive behaviors in a largely
19 unrestricted setting and includes education and monitoring
20 that is appropriate to support the development of independent
21 living skills.

22 (2) Components of a comprehensive transitional
23 education program are subject to the license issued under s.
24 393.067 to a comprehensive transitional education program and
25 may be located on a single site or multiple sites.

26 (3) Comprehensive transitional education programs
27 shall develop individual education plans for each person with
28 maladaptive behaviors who receives services from the program.
29 Each individual education plan shall be developed in
30 accordance with the criteria specified in 20 U.S.C. ss. 401 et
31 seq., and 34 C.F.R. part 300.

1 (4) The total number of persons with maladaptive
2 behaviors being provided services in a comprehensive
3 transitional education program may not in any instance exceed
4 120 residents.

5 Section 31. Section 393.501, Florida Statutes, is
6 amended to read:

7 393.501 Rulemaking.--

8 (1) The agency may ~~shall~~ adopt rules pursuant to s.
9 120.54 to carry out its statutory duties ~~the provisions of~~
10 ~~this chapter.~~

11 (2) Such rules shall address the number of facilities
12 on a single ~~lot parcel~~ or on adjacent ~~lots parcels of land,~~
13 ~~and in addition, for ICF/MR, the rate and location of facility~~
14 ~~development and level of care. In adopting rules, an~~
15 alternative living center and an independent living education
16 center, as described in s. 393.18, shall be subject to the
17 provisions of s. 419.001, except that such centers shall be
18 exempt from the 1,000-foot-radius requirement of s. 419.001(2)
19 if:

20 (a) The centers are located on a site zoned in a
21 manner that permits all the components of a comprehensive
22 transition education center to be located on the site; or

23 (b) There are no more than three such centers within a
24 radius of 1,000 feet.

25 Section 32. Subsection (9) of section 397.405, Florida
26 Statutes, is amended to read:

27 397.405 Exemptions from licensure.--The following are
28 exempt from the licensing provisions of this chapter:

29 (9) Facilities licensed under chapter 393 which s-
30 ~~393.063 that~~, in addition to providing services to persons
31 with developmental disabilities ~~who are developmentally~~

1 ~~disabled as defined therein~~, also provide services to persons
2 developmentally at risk as a consequence of exposure to
3 alcohol or other legal or illegal drugs while in utero.
4

5 The exemptions from licensure in this section do not apply to
6 any service provider that receives an appropriation, grant, or
7 contract from the state to operate as a service provider as
8 defined in this chapter or to any substance abuse program
9 regulated pursuant to s. 397.406. Furthermore, this chapter
10 may not be construed to limit the practice of a physician
11 licensed under chapter 458 or chapter 459, a psychologist
12 licensed under chapter 490, or a psychotherapist licensed
13 under chapter 491 who provides substance abuse treatment, so
14 long as the physician, psychologist, or psychotherapist does
15 not represent to the public that he or she is a licensed
16 service provider and does not provide services to clients
17 pursuant to part V of this chapter. Failure to comply with any
18 requirement necessary to maintain an exempt status under this
19 section is a misdemeanor of the first degree, punishable as
20 provided in s. 775.082 or s. 775.083.

21 Section 33. Subsection (13) of section 400.419,
22 Florida Statutes, is amended to read:

23 400.419 Violations; imposition of administrative
24 fines; grounds.--

25 (13) The agency shall develop and disseminate an
26 annual list of all facilities sanctioned or fined \$5,000 or
27 more for violations of state standards, the number and class
28 of violations involved, the penalties imposed, and the current
29 status of cases. The list shall be disseminated, at no charge,
30 to the Department of Elderly Affairs, the Department of
31 Health, the Department of Children and Family Services, the

1 Agency for Persons with Disabilities, the area agencies on
2 aging, the Florida Statewide Advocacy Council, and the state
3 and local ombudsman councils. The Department of Children and
4 Family Services shall disseminate the list to service
5 providers under contract to the department who are responsible
6 for referring persons to a facility for residency. The agency
7 may charge a fee commensurate with the cost of printing and
8 postage to other interested parties requesting a copy of this
9 list.

10 Section 34. Section 400.960, Florida Statutes, is
11 amended to read:

12 400.960 Definitions.--As used in this part, the term:

13 ~~(1) "Active treatment" means the provision of services~~
14 ~~by an interdisciplinary team which are necessary to maximize a~~
15 ~~client's individual independence or prevent regression or loss~~
16 ~~of functional status.~~

17 (1)(2) "Agency" means the Agency for Health Care
18 Administration.

19 (2)(3) "Autism" or "autistic disorder" has the same
20 meaning as in s. 393.063. ~~means a pervasive, neurologically~~
21 ~~based developmental disability of extended duration which~~
22 ~~causes severe learning, communication, and behavior disorders~~
23 ~~with age of onset during infancy or childhood. Individuals~~
24 ~~with autism exhibit impairment in reciprocal social~~
25 ~~interaction, impairment in verbal and nonverbal communication~~
26 ~~and imaginative ability, and a markedly restricted repertoire~~
27 ~~of activities and interests.~~

28 (3)(4) "Cerebral palsy" has the same meaning as in s.
29 393.063. ~~means a group of disabling symptoms of extended~~
30 ~~duration which results from damage to the developing brain~~
31 ~~occurring before, during, or after birth and resulting in the~~

1 ~~loss or impairment of control over voluntary muscles. The term~~
2 ~~does not include those symptoms or impairments resulting~~
3 ~~solely from a stroke.~~

4 ~~(4)(5)~~ "Client" means any person determined by the
5 Agency for Persons with Disabilities department to be eligible
6 for developmental services.

7 ~~(6)~~ "Client advocate" means a friend or relative of
8 the client, or of the client's immediate family, who advocates
9 for the best interests of the client in any proceedings under
10 this part in which the client or his or her family has the
11 right or duty to participate.

12 ~~(7)~~ "Department" means the Department of Children and
13 Family Services.

14 ~~(5)(8)~~ "Developmental disability" has the same meaning
15 as in s. 393.063 means a disorder or syndrome that is
16 attributable to retardation, cerebral palsy, autism, spina
17 bifida, or Prader Willi syndrome and that constitutes a
18 substantial handicap that can reasonably be expected to
19 continue indefinitely.

20 ~~(6)(9)~~ "Direct service provider" means a person 18
21 years of age or older who has direct contact with individuals
22 with developmental disabilities and who is unrelated to the
23 individuals with developmental disabilities.

24 ~~(10)~~ "Epilepsy" means a chronic brain disorder of
25 various causes which is characterized by recurrent seizures
26 due to excessive discharge of cerebral neurons. When found
27 concurrently with retardation, autism, or cerebral palsy,
28 epilepsy is considered a secondary disability for which the
29 client is eligible to receive services to ameliorate this
30 condition according to the provisions of this part.

31

1 ~~(11)~~ "Guardian advocate" means a person appointed by
2 the circuit court to represent a person with developmental
3 disabilities in any proceedings brought pursuant to s. 393.12,
4 and is distinct from a guardian advocate for mentally ill
5 persons under chapter 394.

6 ~~(7)(12)~~ "Intermediate care facility for the
7 developmentally disabled" means a residential facility
8 licensed and certified in accordance with state law, and
9 certified by the Federal Government, pursuant to the Social
10 Security Act, as a provider of Medicaid services to persons
11 with developmental disabilities who are developmentally
12 disabled.

13 ~~(8)(13)~~ "Prader-Willi syndrome" has the same meaning
14 as in s. 393.063. ~~means an inherited condition typified by~~
15 ~~neonatal hypotonia with failure to thrive, hyperphagia, or an~~
16 ~~excessive drive to eat which leads to obesity, usually at 18~~
17 ~~to 36 months of age, mild to moderate retardation,~~
18 ~~hypogonadism, short stature, mild facial dysmorphism, and a~~
19 ~~characteristic neurobehavior.~~

20 ~~(9)(14)~~ "Retardation" has the same meaning as in s.
21 393.063. ~~means significantly subaverage general intellectual~~
22 ~~functioning existing concurrently with deficits in adaptive~~
23 ~~behavior and manifested during the period from conception to~~
24 ~~age 18. "Significantly subaverage general intellectual~~
25 ~~functioning," for the purpose of this definition, means~~
26 ~~performance that is two or more standard deviations from the~~
27 ~~mean score on a standardized intelligence test specified in~~
28 ~~rules of the department. "Deficits in adaptive behavior," for~~
29 ~~the purpose of this definition, means deficits in the~~
30 ~~effectiveness or degree with which an individual meets the~~
31

1 ~~standards of personal independence and social responsibility~~
2 ~~expected of his or her age, cultural group, and community.~~

3 ~~(10)(15) "Spina bifida" has the same meaning as in s.~~
4 ~~393.063 means a medical diagnosis of spina bifida cystica or~~
5 ~~myelomeningocele.~~

6 Section 35. Subsection (2) of section 400.967, Florida
7 Statutes, is amended to read:

8 400.967 Rules and classification of deficiencies.--

9 (2) Pursuant to the intention of the Legislature, the
10 agency, in consultation with the Agency for Persons with
11 Disabilities ~~Department of Children and Family Services~~ and
12 the Department of Elderly Affairs, shall adopt and enforce
13 rules to administer this part, which shall include reasonable
14 and fair criteria governing:

15 (a) The location and construction of the facility;
16 including fire and life safety, plumbing, heating, cooling,
17 lighting, ventilation, and other housing conditions that will
18 ensure the health, safety, and comfort of residents. The
19 agency shall establish standards for facilities and equipment
20 to increase the extent to which new facilities and a new wing
21 or floor added to an existing facility after July 1, 2000, are
22 structurally capable of serving as shelters only for
23 residents, staff, and families of residents and staff, and
24 equipped to be self-supporting during and immediately
25 following disasters. ~~The Agency for Health Care Administration~~
26 ~~shall work with facilities licensed under this part and report~~
27 ~~to the Governor and the Legislature by April 1, 2000, its~~
28 ~~recommendations for cost effective renovation standards to be~~
29 ~~applied to existing facilities. In making such rules, the~~
30 ~~agency shall be guided by criteria recommended by nationally~~
31 ~~recognized, reputable professional groups and associations~~

1 ~~having knowledge concerning such subject matters.~~ The agency
2 shall update or revise such criteria as the need arises. All
3 facilities must comply with those lifesafety code requirements
4 and building code standards applicable at the time of approval
5 of their construction plans. The agency may require
6 alterations to a building if it determines that an existing
7 condition constitutes a distinct hazard to life, health, or
8 safety. The agency shall adopt fair and reasonable rules
9 setting forth conditions under which existing facilities
10 undergoing additions, alterations, conversions, renovations,
11 or repairs are required to comply with the most recent updated
12 or revised standards.

13 (b) The number and qualifications of all personnel,
14 including management, ~~medical~~ nursing, and other personnel,
15 having responsibility for any part of the care given to
16 residents.

17 (c) All sanitary conditions within the facility and
18 its surroundings, including water supply, sewage disposal,
19 food handling, and general hygiene, which will ensure the
20 health and comfort of residents.

21 (d) The equipment essential to the health and welfare
22 of the residents.

23 (e) A uniform accounting system.

24 (f) The care, treatment, and maintenance of residents
25 and measurement of the quality and adequacy thereof.

26 (g) The preparation and annual update of a
27 comprehensive emergency management plan. The agency shall
28 adopt rules establishing minimum criteria for the plan after
29 consultation with the Department of Community Affairs. At a
30 minimum, the rules must provide for plan components that
31 address emergency evacuation transportation; adequate

1 sheltering arrangements; postdisaster activities, including
2 emergency power, food, and water; postdisaster transportation;
3 supplies; staffing; emergency equipment; individual
4 identification of residents and transfer of records; and
5 responding to family inquiries. The comprehensive emergency
6 management plan is subject to review and approval by the local
7 emergency management agency. During its review, the local
8 emergency management agency shall ensure that the following
9 agencies, at a minimum, are given the opportunity to review
10 the plan: the Department of Elderly Affairs, the Agency for
11 Persons with Disabilities ~~Department of Children and Family~~
12 ~~Services~~, the Agency for Health Care Administration, and the
13 Department of Community Affairs. Also, appropriate volunteer
14 organizations must be given the opportunity to review the
15 plan. The local emergency management agency shall complete its
16 review within 60 days and either approve the plan or advise
17 the facility of necessary revisions.

18 (h) Each licensee shall post its license in a
19 prominent place that is in clear and unobstructed public view
20 at or near the place where residents are being admitted to the
21 facility.

22 Section 36. Section 402.115, Florida Statutes, is
23 amended to read:

24 402.115 Sharing confidential or exempt
25 information.--Notwithstanding any other provision of law to
26 the contrary, the Department of Health, ~~and~~ the Department of
27 Children and Family Services, and the Agency for Persons with
28 Disabilities may share confidential information or information
29 exempt from disclosure under chapter 119 on any individual who
30 is or has been the subject of a program within the
31

1 jurisdiction of each agency. Information so exchanged remains
2 confidential or exempt as provided by law.

3 Section 37. Section 402.17, Florida Statutes, is
4 amended to read:

5 402.17 Claims for care and maintenance; trust
6 property.--The Department of Children and Family Services and
7 the Agency for Persons with Disabilities shall protect the
8 financial interest of the state with respect to claims that
9 ~~which~~ the state may have for the care and maintenance of
10 clients of the department or agency. The department or agency
11 shall, as trustee, hold in trust and administer money ~~of~~
12 ~~clients~~ and property designated for the personal benefit of
13 clients. The department or agency shall act as trustee of
14 clients' money and property entrusted to it in accordance with
15 the usual fiduciary standards applicable generally to
16 trustees, and shall act to protect both the short-term and
17 long-term interests of the clients for whose benefit it is
18 holding such money and property.

19 (1) CLAIMS FOR CARE AND MAINTENANCE.--

20 (a) The department or agency shall perform the
21 following acts:

22 1. Receive and supervise the collection of sums due
23 the state.

24 2. Bring any court action necessary to collect any
25 claim the state may have against any client, former client,
26 guardian of any client or former client, executor or
27 administrator of the client's estate, or any person against
28 whom any client or former client may have a claim.

29 3. Obtain a copy of any inventory or appraisal of the
30 client's property filed with any court.

31

1 4. Obtain from the department's Economic
2 Self-Sufficiency Services Program Office a financial status
3 report on any client or former client, including the ability
4 of third parties responsible for such client to pay all or
5 part of the cost of the client's care and maintenance.

6 5. Petition the court for appointment of a guardian or
7 administrator for an otherwise unrepresented client or former
8 client should the financial status report or other information
9 indicate the need for such action. The cost of any such action
10 shall be charged against the assets or estate of the client.

11 6. Represent the interest of the state in any
12 litigation in which a client or former client is a party.

13 7. File claims with any person, firm, or corporation
14 or with any federal, state, county, district, or municipal
15 agency on behalf of an unrepresented client.

16 8. Represent the state in the settlement of the
17 estates of deceased clients or in the settlement of estates in
18 which a client or a former client against whom the state may
19 have a claim has a financial interest.

20 9. Establish procedures by rule for the use of amounts
21 held in trust for the client to pay for the cost of care and
22 maintenance, if such amounts would otherwise cause the client
23 to become ineligible for services which are in the client's
24 best interests.

25 (b) The department or agency ~~of Children and Family~~
26 ~~Services~~ may charge off accounts if it certifies that the
27 accounts are uncollectible after diligent efforts have been
28 made to collect them. If the department certifies an account
29 to the Department of Financial Services, setting forth the
30 circumstances upon which it predicates the uncollectibility,
31

1 and if, pursuant to s. 17.04, the Department of Financial
2 Services concurs, the account shall be charged off.

3 (2) MONEY OR OTHER PROPERTY RECEIVED FOR PERSONAL USE
4 OR BENEFIT OF ANY CLIENT.--The department or agency shall
5 perform the following acts:

6 (a) Accept and administer in trust, as a trustee
7 having a fiduciary responsibility to a client ~~of the~~
8 ~~department~~, any money or other property received for personal
9 use or benefit of that client. In the case of children in the
10 legal custody of the department, following the termination of
11 the parental rights ~~as to that client~~, until the child such
12 ~~client~~ leaves the legal custody of the department due to ~~the~~
13 ~~client's~~ adoption or attaining ~~because the client attains~~ the
14 age of 18 or, in the case of children who are otherwise in the
15 custody of the department, the court having jurisdiction over
16 such child client shall have jurisdiction, upon application of
17 the department or other interested party, to review or approve
18 any extraordinary action of the department acting as trustee
19 as to the child's client's money or other property. When
20 directed by a court of competent jurisdiction, the department
21 may further hold money or property of a child person under the
22 ~~age of 18~~ who has been in the care, custody, or control of the
23 department and who is the subject of a court proceeding during
24 the pendency of that proceeding.

25 (b) Deposit the money in banks qualified as state
26 depositories, or in any bank, credit union, or savings and
27 loan association authorized to do business in this state,
28 provided moneys so deposited or held by such institutions are
29 fully insured by a federal depository or share insurance
30 program, or an approved state depository or share insurance
31 program, and are available on demand.

1 (c) Withdraw the money and use it to meet current
2 needs of clients. For purposes of this paragraph, "current
3 needs" includes payment of fees assessed under s. 402.33. The
4 amount of money withdrawn ~~by the department to meet current~~
5 ~~needs of a client~~ shall take into account the need of the
6 department or agency, as the trustee of a client's money and
7 property, to provide for the long-term needs of a client,
8 including, but not limited to, ensuring that ~~to provide for~~
9 ~~the need of~~ a client under the age of 18 will ~~to~~ have
10 sufficient financial resources available to be able to
11 function as an adult upon reaching the age of 18, meeting ~~or~~
12 ~~to meet~~ the special needs of a client who has a disability and
13 whose special needs cannot otherwise be met by any form of
14 public assistance or family resources, or maintaining ~~to~~
15 ~~maintain~~ the client's eligibility for public assistance,
16 including medical assistance, under state or federal law.

17 (d) As trustee, invest in the manner authorized by law
18 for fiduciaries money not used for current needs of clients.
19 Such investments may include, but shall not be limited to,
20 investments in savings share accounts of any credit union
21 chartered under the laws of the United States and doing
22 business in this state, and savings share accounts of any
23 credit union chartered under the laws of this state, provided
24 the credit union is insured under the federal share insurance
25 program or an approved state share insurance program.

26 (3) DEPOSIT OF FUNDS RECEIVED.--Funds received by the
27 Department of Children and Family Services in accordance with
28 s. 402.33 shall be deposited into a trust fund for the
29 operation of the department.

30 (4) DISPOSITION OF UNCLAIMED TRUST FUNDS.--Upon the
31 death of any client affected by the provisions of this

1 section, any unclaimed money held in trust by the department,
2 the agency, or by the Chief Financial Officer for the child
3 ~~him or her~~ shall be applied first to the payment of any unpaid
4 claim of the state against the client, and any balance
5 remaining unclaimed for a period of 1 year shall escheat to
6 the state as unclaimed funds held by fiduciaries.

7 (5) LEGAL REPRESENTATION.--To the extent that the
8 budget will permit, the Department of Legal Affairs shall
9 furnish the legal services to carry out the provisions of this
10 section. Upon the request of the department or agency ~~of~~
11 ~~Children and Family Services~~, the various state and county
12 attorneys shall assist in litigation within their
13 jurisdiction. ~~The Such~~ department or agency may retain legal
14 counsel for necessary legal services which cannot be furnished
15 by the Department of Legal Affairs and the various state and
16 county attorneys.

17 (6) DEPOSIT OR INVESTMENT OF FUNDS OF CLIENTS.--

18 (a) The department or agency ~~of Children and Family~~
19 ~~Services~~ may deposit any funds of clients in its possession in
20 any bank in the state or may invest or reinvest such funds in
21 bonds or obligations of the United States for the payment of
22 which the full faith and credit of the United States is
23 pledged. For purposes of deposit only, the funds of any client
24 may be mingled with the funds of any other clients.

25 (b) The interest or increment accruing on such funds
26 shall be the property of the clients and shall be used or
27 conserved for the personal use or benefit of the ~~individual~~
28 client, in accordance with the department's or agency's
29 fiduciary responsibility as a trustee for the money and
30 property of the client ~~held by the department~~. Such interest
31 shall not accrue to the general welfare of all clients.

1 Whenever any proposed action of the department or agency,
2 acting in its own interest, may conflict with the department's
3 or agency's ~~obligation as a trustee with a~~ fiduciary
4 responsibility to the client, the department or agency shall
5 promptly present the matter to a court of competent
6 jurisdiction for the court's determination as to what action
7 the department or agency may take. The department or agency
8 shall establish ~~rules governing~~ reasonable fees by rule for
9 the cost of administering such accounts and for establishing
10 the minimum balance eligible to earn interest.

11 (7) DISPOSITION OF MONEY AND PROPERTY OF CLIENTS UPON
12 ATTAINING AGE 18 OR DISCHARGE FROM CARE, CUSTODY, CONTROL, OR
13 SERVICES OF THE DEPARTMENT.--

14 (a) Whenever a client of the department for whom the
15 department is holding money or property as a trustee attains
16 the age of 18, and thereby will no longer be in the legal
17 custody of the department, the department shall promptly
18 disburse such money and property ~~of the client the department~~
19 ~~has held as a trustee~~ to that client, or as that client
20 directs, as soon as practicable ~~once the client attains the~~
21 ~~age of 18.~~

22 (b) Whenever a client of the department over the age
23 of 18 for whom the department is holding money or property as
24 a trustee no longer requires the care, custody, control, or
25 services of the department, the department shall promptly
26 disburse such money and property ~~of the client the department~~
27 ~~has held as a trustee~~ to that client, or as that client or a
28 court directs, as soon as practicable.

29 (c) When a client under the age of 18 who has been in
30 the legal custody, care, or control of the department and for
31 whom the department is holding money or property as a trustee

1 attains the age of 18 and has a physical or mental disability,
2 or is otherwise incapacitated or incompetent to handle that
3 client's own financial affairs, the department shall apply for
4 a court order from a court of competent jurisdiction to
5 establish a trust on behalf of that client. Where there is no
6 willing relative of the client acceptable to the court
7 available to serve as trustee of such proposed trust, the
8 court may enter an order authorizing the department to serve
9 as trustee of a separate trust under such terms and conditions
10 as the court determines appropriate to the circumstances.

11 (d) When a client under the age of 18 who has been in
12 the legal custody, care, or control of the department and for
13 whom the department is holding money or property as a trustee
14 leaves the care, custody, and control of the department due to
15 adoption or placement of the client with a relative, or as
16 otherwise directed by a court of competent jurisdiction, the
17 department shall notify that court of the existence of the
18 money and property ~~in the possession of the department~~ either
19 prior to, or promptly after, receiving knowledge of the change
20 of custody, care, or control. The department shall apply for
21 an order from the court exercising jurisdiction over the
22 client to direct the disposition of the money and property
23 belonging to that client. The court order may establish a
24 trust in which the money and property of the client will be
25 deposited, appoint a guardian of a property as to the money or
26 property of the client, or direct the creation of a Uniform
27 Transfers Gifts to Minors Act account on behalf of that
28 client, ~~as the court finds appropriate and~~ under the terms and
29 conditions the court determines appropriate to the
30 circumstances.

31

1 Section 38. Section 402.181, Florida Statutes, is
2 amended to read:

3 402.181 State Institutions Claims Program.--

4 (1) There is created a State Institutions Claims
5 Program, for the purpose of making restitution for property
6 damages and direct medical expenses for injuries caused by
7 shelter children or foster children, or escapees, inmates, or
8 patients of state institutions under the Department of
9 Children and Family Services, the Department of Health, the
10 Department of Juvenile Justice, ~~or~~ the Department of
11 Corrections, or the Agency for Persons with Disabilities.

12 (2) Claims for restitution may be filed with the
13 Department of Legal Affairs at its office in accordance with
14 regulations prescribed by the Department of Legal Affairs. The
15 Department of Legal Affairs shall have full power and
16 authority to hear, investigate, and determine all questions in
17 respect to such claims and is authorized, within the limits of
18 current appropriations, to pay individual claims up to \$1,000
19 or, with respect to children in foster care and their
20 families, individual claims up to \$1,500. Claims in excess of
21 these amounts shall continue to require legislative approval.

22 (3)(a) The Department of Legal Affairs shall make or
23 cause to be made such investigations as it considers necessary
24 in respect to such claims. Hearings shall be held in
25 accordance with chapter 120.

26 (b) The Department of Legal Affairs shall work with
27 the Department of Children and Family Services, the Department
28 of Health, the Department of Juvenile Justice, ~~and~~ the
29 Department of Corrections, and the Agency for Persons with
30 Disabilities to streamline the process of investigations,
31 hearings, and determinations with respect to claims under this

1 section, to ensure that eligible claimants receive restitution
2 within a reasonable time.

3 Section 39. Section 402.22, Florida Statutes, is
4 amended to read:

5 402.22 Education program for students who reside in
6 residential care facilities operated by the Department of
7 Children and Family Services or the Agency for Persons with
8 Disabilities.--

9 (1)(a) The Legislature recognizes that the Department
10 of Children and Family Services and the Agency for Persons
11 with Disabilities have under their ~~has under its~~ residential
12 care students with critical problems of physical impairment,
13 emotional disturbance, mental impairment, and learning
14 impairment.

15 (b) The Legislature recognizes the vital role of
16 education in the rehabilitation of such students. It is the
17 intent of the Legislature that all such students benefit from
18 educational services and receive such services.

19 (c) It is the intent of the Legislature that
20 educational services be coordinated with appropriate and
21 existing diagnostic and evaluative, social, followup, and
22 other therapeutic services of the department and agency of
23 ~~Children and Family Services~~ so that the effect of the total
24 rehabilitation process is maximized.

25 (d) It is the intent of the Legislature that, as
26 educational programs for students in residential care
27 facilities are implemented by the district school board,
28 educational personnel in the ~~Department of Children and Family~~
29 ~~Services~~ residential care facilities who meet the
30 qualifications for employees of the district school board be
31 employed by the district school board.

1 (2) District school boards shall establish educational
2 programs for all students ages 5 through 18 under the
3 residential care of the Department of Children and Family
4 Services and the Agency for Persons with Disabilities, and may
5 provide for students below age 3 as provided for in s.
6 1003.21(1)(e). Funding of such programs shall be pursuant to
7 s. 1011.62.

8 (3) Notwithstanding any provisions of chapters 39,
9 393, 394, and 397 to the contrary, the services of the
10 Department of Children and Family Services and the Agency for
11 Persons with Disabilities and those of the Department of
12 Education and district school boards shall be mutually
13 supportive and complementary of each other. The education
14 programs provided by the district school board shall meet the
15 standards prescribed by the State Board of Education and the
16 district school board. Decisions regarding the design and
17 delivery of department or agency of Children and Family
18 ~~Services~~ treatment or habilitative services shall be made by
19 interdisciplinary teams of professional and paraprofessional
20 staff of which appropriate district school system
21 administrative and instructional personnel shall be invited to
22 be participating members. The requirements for maintenance of
23 confidentiality as prescribed in chapters 39, 393, 394, and
24 397 shall be applied to information used by such
25 interdisciplinary teams, and such information shall be exempt
26 from the provisions of ss. 119.07(1) and 286.011.

27 (4) Students age 18 and under who are under the
28 residential care of the Department of Children and Family
29 Services or the Agency for Persons with Disabilities and who
30 receive an education program shall be calculated as full-time
31 equivalent student membership in the appropriate cost factor

1 as provided for in s. 1011.62(1)(c). Residential care
2 facilities ~~of the Department of Children and Family Services~~
3 shall include, but not be limited to, developmental
4 disabilities services institutions and state mental health
5 facilities. All students shall receive their education
6 program from the district school system, and funding shall be
7 allocated through the Florida Education Finance Program for
8 the district school system.

9 (5) Instructional and special educational services
10 ~~that which~~ are provided to mental ~~health and retardation~~
11 clients with mental illness or developmental disabilities of
12 the department's or agency's in the Department of Children and
13 ~~Family Services~~ residential care facilities by local school
14 districts shall not be less than 180 days or 900 hours;
15 however, the 900 hours may be distributed over a 12-month
16 period, unless otherwise stated in rules developed by the
17 State Board of Education, with the concurrence of the
18 department or agency of Children and Family Services
19 ~~promulgated~~ pursuant to subsection (6).

20 (6) The State Board of Education, and the Department
21 of Children and Family Services, and the Agency for Persons
22 with Disabilities may adopt ~~shall have the authority to~~
23 ~~promulgate~~ rules to which shall assist in the orderly transfer
24 of the instruction of students from Department of Children and
25 Family Services residential care facilities to the district
26 school system or to the public education agency and which
27 shall assist in implementing the specific intent as stated in
28 this act.

29 (7) Notwithstanding the provisions of s.
30 1001.42(4)(n), the educational program at the Marianna Sunland
31 Center in Jackson County shall be operated by the Department

1 of Education, either directly or through grants or contractual
2 agreements with other public educational agencies. The annual
3 state allocation to any such agency shall be computed pursuant
4 to s. 1011.62(1), (2), and (5) and allocated in the amount
5 that would have been provided the local school district in
6 which the residential facility is located.

7 Section 40. Paragraph (c) of subsection (1) and
8 subsection (2) of section 402.33, Florida Statutes, are
9 amended to read:

10 402.33 Department authority to charge fees for
11 services provided.--

12 (1) As used in this section, the term:

13 (c) "Department" means the Department of Children and
14 Family Services, ~~and~~ the Department of Health, and the Agency
15 for Persons with Disabilities.

16 (2) The department, in accordance with rules
17 established by it, shall either charge, assess, or collect, or
18 cause to be charged, assessed, or collected, fees for any
19 service it provides to its clients either directly or through
20 its agencies or contractors, except for:

21 (a) Diagnosis and evaluation procedures necessary to
22 determine the client's eligibility and need for services
23 provided by the department;

24 (b) Customary and routine information and referral
25 services;

26 (c) Educational services provided in lieu of public
27 education;

28 (d) Specific services exempted by law from fee
29 assessment;

30 (e) Emergency shelter or emergency detention care and
31 custody prior to a detention hearing under chapter 39;

1 (f) Specific classes or types of services provided in
2 programs funded by grants, donations, or contracts that
3 prohibit charging fees;

4 (g) Developmental disability services provided under
5 chapter 393 to any person who is determined to be eligible for
6 such services ~~by the department~~ and whose earned income falls
7 below the federal Health and Human Services Poverty
8 Guidelines, unless such fees are collected from third-party
9 benefits and benefit payments; or

10 (h) Any type of service for which the department
11 determines that the net estimated revenue from such fees after
12 deducting any loss of funds from federal grants occasioned by
13 such fees will be less than the estimated cost to charge and
14 collect such fees.

15
16 Fees, other than third-party benefits and benefit payments,
17 may not be charged for services provided to indigents whose
18 only sources of income are from state and federal aid. In
19 addition, fees may not be charged parents of a minor client
20 for services requested by the minor without parental consent
21 or for services provided a minor client who has been
22 permanently committed to the care and custody of the
23 department with parental rights permanently severed. However,
24 lack of parental consent does not preclude the charging of
25 fees established under chapter 39. ~~The department may not~~
26 ~~require~~ A client who is receiving wages that ~~which~~ are below
27 the minimum wage under the federal Fair Labor Standards Act
28 may not be required to pay fees from such wages. Voluntary
29 payments for services must be encouraged.

30 Section 41. Paragraph (s) of subsection (3) of section
31 408.036, Florida Statutes, is amended to read:

1 408.036 Projects subject to review; exemptions.--

2 (3) EXEMPTIONS.--Upon request, the following projects
3 are subject to exemption from the provisions of subsection
4 (1):

5 (s) For beds in state developmental disabilities
6 ~~services~~ institutions as defined in s. 393.063.

7 Section 42. Paragraph (a) of subsection (2) and
8 subsection (8) of section 409.908, Florida Statutes, are
9 amended to read:

10 409.908 Reimbursement of Medicaid providers.--Subject
11 to specific appropriations, the agency shall reimburse
12 Medicaid providers, in accordance with state and federal law,
13 according to methodologies set forth in the rules of the
14 agency and in policy manuals and handbooks incorporated by
15 reference therein. These methodologies may include fee
16 schedules, reimbursement methods based on cost reporting,
17 negotiated fees, competitive bidding pursuant to s. 287.057,
18 and other mechanisms the agency considers efficient and
19 effective for purchasing services or goods on behalf of
20 recipients. If a provider is reimbursed based on cost
21 reporting and submits a cost report late and that cost report
22 would have been used to set a lower reimbursement rate for a
23 rate semester, then the provider's rate for that semester
24 shall be retroactively calculated using the new cost report,
25 and full payment at the recalculated rate shall be effected
26 retroactively. Medicare-granted extensions for filing cost
27 reports, if applicable, shall also apply to Medicaid cost
28 reports. Payment for Medicaid compensable services made on
29 behalf of Medicaid eligible persons is subject to the
30 availability of moneys and any limitations or directions
31 provided for in the General Appropriations Act or chapter 216.

1 Further, nothing in this section shall be construed to prevent
2 or limit the agency from adjusting fees, reimbursement rates,
3 lengths of stay, number of visits, or number of services, or
4 making any other adjustments necessary to comply with the
5 availability of moneys and any limitations or directions
6 provided for in the General Appropriations Act, provided the
7 adjustment is consistent with legislative intent.

8 (2)(a)1. Reimbursement to nursing homes licensed under
9 part II of chapter 400 and state-owned-and-operated
10 intermediate care facilities for the developmentally disabled
11 licensed under part XI of chapter 400 ~~chapter 393~~ must be made
12 prospectively.

13 2. Unless otherwise limited or directed in the General
14 Appropriations Act, reimbursement to hospitals licensed under
15 part I of chapter 395 for the provision of swing-bed nursing
16 home services must be made on the basis of the average
17 statewide nursing home payment, and reimbursement to a
18 hospital licensed under part I of chapter 395 for the
19 provision of skilled nursing services must be made on the
20 basis of the average nursing home payment for those services
21 in the county in which the hospital is located. When a
22 hospital is located in a county that does not have any
23 community nursing homes, reimbursement shall ~~must~~ be
24 determined by averaging the nursing home payments~~7~~ in counties
25 that surround the county in which the hospital is located.
26 Reimbursement to hospitals, including Medicaid payment of
27 Medicare copayments, for skilled nursing services shall be
28 limited to 30 days, unless a prior authorization has been
29 obtained from the agency. Medicaid reimbursement may be
30 extended by the agency beyond 30 days, and approval must be
31 based upon verification by the patient's physician that the

1 patient requires short-term rehabilitative and recuperative
2 services only, in which case an extension of no more than 15
3 days may be approved. Reimbursement to a hospital licensed
4 under part I of chapter 395 for the temporary provision of
5 skilled nursing services to nursing home residents who have
6 been displaced as the result of a natural disaster or other
7 emergency may not exceed the average county nursing home
8 payment for those services in the county in which the hospital
9 is located and is limited to the period of time which the
10 agency considers necessary for continued placement of the
11 nursing home residents in the hospital.

12 (8) A provider of home-based or community-based
13 services rendered pursuant to a federally approved waiver
14 shall be reimbursed based on an established or negotiated rate
15 for each service. These rates shall be established according
16 to an analysis of the expenditure history and prospective
17 budget developed by each contract provider participating in
18 the waiver program, or under any other methodology adopted by
19 the agency and approved by the Federal Government in
20 accordance with the waiver. ~~Effective July 1, 1996,~~ Privately
21 owned and operated community-based residential facilities
22 which meet agency requirements and which formerly received
23 Medicaid reimbursement for the optional intermediate care
24 facility for the mentally retarded service may participate in
25 the developmental services waiver as part of a
26 home-and-community-based continuum of care for Medicaid
27 recipients who receive waiver services.

28 Section 43. Subsection (3) of section 409.9127,
29 Florida Statutes, is amended to read:

30 409.9127 Preauthorization and concurrent utilization
31 review; conflict-of-interest standards.--

1 (3) The agency shall help the Agency for Persons with
2 Disabilities ~~Department of Children and Family Services~~ meet
3 the requirements of s. 393.065(4). Only admissions approved
4 pursuant to such assessments are eligible for reimbursement
5 under this chapter.

6 Section 44. Paragraph (c) of subsection (2) and
7 subsection (5) of section 411.224, Florida Statutes, are
8 amended to read:

9 411.224 Family support planning process.--The
10 Legislature establishes a family support planning process to
11 be used by the Department of Children and Family Services as
12 the service planning process for targeted individuals,
13 children, and families under its purview.

14 (2) To the extent possible within existing resources,
15 the following populations must be included in the family
16 support planning process:

17 (c) Children from age 3 ~~birth~~ through age 5 who are
18 served by the Agency for Persons with Disabilities
19 ~~Developmental Disabilities Program Office of the Department of~~
20 ~~Children and Family Services.~~

21 (5) There must be only a single-family support plan to
22 address the problems of the various family members unless the
23 family requests that an individual family support plan be
24 developed for different members of that family. The family
25 support plan must replace individual habilitation plans for
26 children from 3 ~~birth~~ through 5 years old who are served by
27 the Agency for Persons with Disabilities ~~Developmental~~
28 ~~Disabilities Program Office of the Department of Children and~~
29 ~~Family Services. To the extent possible, the family support~~
30 ~~plan must replace other case planning forms used by the~~
31 ~~Department of Children and Family Services.~~

1 Section 45. Subsection (4) of section 411.232, Florida
2 Statutes, is amended to read:

3 411.232 Children's Early Investment Program.--

4 (4) RULES FOR IMPLEMENTATION.--The Department of
5 Health ~~and Rehabilitative Services~~ shall adopt rules necessary
6 to implement this section.

7 Section 46. Subsection (8) of section 415.102, Florida
8 Statutes, is amended to read:

9 415.102 Definitions of terms used in ss.

10 415.101-415.113.--As used in ss. 415.101-415.113, the term:

11 (8) "Facility" means any location providing day or
12 residential care or treatment for vulnerable adults. The term
13 "facility" may include, but is not limited to, any hospital,
14 state institution, nursing home, assisted living facility,
15 adult family-care home, adult day care center, residential
16 facility licensed under chapter 393 ~~group home~~, or mental
17 health treatment center.

18 Section 47. Section 415.1035, Florida Statutes, is
19 amended to read:

20 415.1035 Facility's duty to inform residents of their
21 right to report abusive, neglectful, or exploitive
22 practices.--The department shall work cooperatively with the
23 Agency for Health Care Administration, the Agency for Persons
24 with Disabilities, and the Department of Elderly Affairs to
25 ensure that every facility that serves vulnerable adults
26 informs residents of their right to report abusive,
27 neglectful, or exploitive practices. Each facility must
28 establish appropriate policies and procedures to facilitate
29 such reporting.

30 Section 48. Subsections (1) and (10) of section
31 415.1055, Florida Statutes, are amended to read:

1 415.1055 Notification to administrative entities.--

2 (1) Upon receipt of a report that alleges that an
3 employee or agent of the department, the Agency for Persons
4 with Disabilities, or the Department of Elderly Affairs,
5 acting in an official capacity, has committed an act of abuse,
6 neglect, or exploitation, the department shall notify the
7 state attorney in whose circuit the abuse, neglect, or
8 exploitation occurred. This notification may be oral or
9 written.

10 (10) When a report has been received and the
11 department has reason to believe that a vulnerable adult
12 resident of a facility licensed by the Agency for Health Care
13 Administration or the Agency for Persons with Disabilities has
14 been the victim of abuse, neglect, or exploitation, the
15 department shall provide a copy of its investigation to the
16 appropriate agency. If the investigation determines that a
17 health professional licensed or certified under the Department
18 of Health may have abused, neglected, or exploited a
19 vulnerable adult, the department shall also provide a copy to
20 the Department of Health.

21 Section 49. Paragraphs (a) and (h) of subsection (3)
22 of section 415.107, Florida Statutes, are amended to read:

23 415.107 Confidentiality of reports and records.--

24 (3) Access to all records, excluding the name of the
25 reporter which shall be released only as provided in
26 subsection (6), shall be granted only to the following
27 persons, officials, and agencies:

28 (a) Employees or agents of the department, the Agency
29 for Persons with Disabilities, ~~of~~ the Agency for Health Care
30 Administration, or ~~of~~ the Department of Elderly Affairs who
31 are responsible for carrying out protective investigations,

1 ongoing protective services, or licensure or approval of
2 nursing homes, assisted living facilities, adult day care
3 centers, adult family-care homes, home care for the elderly,
4 hospices, residential facilities licensed under chapter 393,
5 or other facilities used for the placement of vulnerable
6 adults.

7 (h) Any appropriate official of the department, the
8 Agency for Persons with Disabilities, ~~of~~ the Agency for Health
9 Care Administration, or ~~of~~ the Department of Elderly Affairs
10 who is responsible for:

11 1. Administration or supervision of the programs for
12 the prevention, investigation, or treatment of abuse, neglect,
13 or exploitation of vulnerable adults when carrying out an
14 official function; or

15 2. Taking appropriate administrative action concerning
16 an employee alleged to have perpetrated abuse, neglect, or
17 exploitation of a vulnerable adult in an institution.

18 Section 50. Subsections (1), (2), (3), and (6) of
19 section 419.001, Florida Statutes, are amended to read:

20 419.001 Site selection of community residential
21 homes.--

22 (1) For the purposes of this section, the term
23 ~~following definitions shall apply:~~

24 (a) "Community residential home" means a dwelling unit
25 licensed to provide ~~serve clients of the Department of~~
26 ~~Children and Family Services, which provides~~ a living
27 environment for 7 to 14 unrelated residents who operate as the
28 functional equivalent of a family, including such supervision
29 and care by supportive staff as may be necessary to meet the
30 physical, emotional, and social needs of the residents.

31

1 (b) "Department" or "agency" means the Department of
2 Children and Family Services, the Agency for Health Care
3 Administration, or the Agency for Persons with Disabilities.

4 (c) "Local government" means a county as set forth in
5 chapter 7 or a municipality incorporated under the provisions
6 of chapter 165.

7 (d) "Resident" means any of the following: a frail
8 elder as defined in s. 400.618; a ~~physically disabled or~~
9 ~~handicapped~~ person with a physical or mental impairment as
10 described as defined in s. 760.22(7)(a); a ~~developmentally~~
11 ~~disabled~~ person with a developmental disability as defined in
12 s. 393.063; a nondangerous ~~mentally ill~~ person with a mental
13 illness as defined in s. 394.455(18); or a child as defined in
14 s. 39.01(14), s. 984.03(9) or (12), or s. 985.03(8).

15 (e) "Sponsoring agency" means an agency or unit of
16 government, a profit or nonprofit agency, or any other person
17 or organization which intends to establish or operate a
18 community residential home.

19 (2) Homes of six or fewer residents which otherwise
20 meet the definition of a community residential home shall be
21 deemed a single-family unit and a noncommercial, residential
22 use for the purpose of local laws and ordinances. Homes of
23 six or fewer residents which otherwise meet the definition of
24 a community residential home shall be allowed in single-family
25 or multifamily zoning without approval by the local
26 government, provided that such homes shall not be located
27 within a radius of 1,000 feet of another existing such home
28 with six or fewer residents. Such homes with six or fewer
29 residents shall not be required to comply with the
30 notification provisions of this section; provided, however,
31 that the sponsoring agency ~~or the department~~ notifies the

1 local government at the time of home occupancy that the home
2 is licensed by the department or agency.

3 (3)(a) When a site for a community residential home
4 has been selected by a sponsoring agency in an area zoned for
5 multifamily, the sponsoring agency shall notify the chief
6 executive officer of the local government in writing and
7 include in such notice the specific address of the site, the
8 residential licensing category, the number of residents, and
9 the community support requirements of the program. Such notice
10 shall also contain a statement from the district administrator
11 of the department indicating the need for and the licensing
12 status of the proposed community residential home and
13 specifying how the home meets applicable licensing criteria
14 for the safe care and supervision of the clients in the home.
15 The department and agency ~~district administrator~~ shall also
16 provide to the local government the most recently published
17 data compiled that identifies all community residential homes
18 in the district of the department in which the proposed site
19 is to be located. The local government shall review the
20 notification of the sponsoring agency in accordance with the
21 zoning ordinance of the jurisdiction.

22 (b) Pursuant to such review, the local government may:

23 1. Determine that the siting of the community
24 residential home is in accordance with local zoning and
25 approve the siting. If the siting is approved, the sponsoring
26 agency may establish the home at the site selected.

27 2. Fail to respond within 60 days. If the local
28 government fails to respond within such time, the sponsoring
29 agency may establish the home at the site selected.

30 3. Deny the siting of the home.
31

1 (c) The local government shall not deny the siting of
2 a community residential home unless the local government
3 establishes that the siting of the home at the site selected:

4 1. Does not otherwise conform to existing zoning
5 regulations applicable to other multifamily uses in the area.

6 2. Does not meet applicable licensing criteria
7 established and determined by the department or agency,
8 including requirements that the home be located to assure the
9 safe care and supervision of all clients in the home.

10 3. Would result in such a concentration of community
11 residential homes in the area in proximity to the site
12 selected, or would result in a combination of such homes with
13 other residences in the community, such that the nature and
14 character of the area would be substantially altered. A home
15 that is located within a radius of 1,200 feet of another
16 existing community residential home in a multifamily zone
17 shall be an overconcentration of such homes that substantially
18 alters the nature and character of the area. A home that is
19 located within a radius of 500 feet of an area of
20 single-family zoning substantially alters the nature and
21 character of the area.

22 (6) The department or agency may ~~shall~~ not issue a
23 license to a sponsoring agency for operation of a community
24 residential home if the sponsoring agency does not notify the
25 local government of its intention to establish a program, as
26 required by subsection (3). A license issued without
27 compliance with the provisions of this section shall be
28 considered null and void, and continued operation of the home
29 may be enjoined.

30 Section 51. Paragraph (a) of subsection (3) of section
31 435.03, Florida Statutes, is amended to read:

1 435.03 Level 1 screening standards.--

2 (3) Standards must also ensure that the person:

3 (a) For employees and employers licensed or registered
4 pursuant to chapter 400, and for employees and employers of
5 developmental disabilities ~~services~~ institutions as defined in
6 s. 393.063, intermediate care facilities for the
7 developmentally disabled as defined in s. 400.960 ~~s. 393.063~~,
8 and mental health treatment facilities as defined in s.
9 394.455, meets the requirements of this chapter.

10 Section 52. Section 944.602, Florida Statutes, is
11 amended to read:

12 944.602 Agency notification ~~of Department of Children~~
13 ~~and Family Services~~ before release of mentally retarded
14 inmates.--Before the release by parole, release by reason of
15 gain-time allowances provided for in s. 944.291, or expiration
16 of sentence of any inmate who has been diagnosed as mentally
17 retarded as defined in s. 393.063, the Department of
18 Corrections shall notify the Agency for Persons with
19 Disabilities ~~Department of Children and Family Services~~ in
20 order that sufficient time be allowed to notify the inmate or
21 the inmate's representative, in writing, at least 7 days prior
22 to the inmate's release, of available community services.

23 Section 53. Subsections (2) and (3) of section
24 945.025, Florida Statutes, are amended to read:

25 945.025 Jurisdiction of department.--

26 (2) In establishing, operating, and utilizing these
27 facilities, the department shall attempt, whenever possible,
28 to avoid the placement of nondangerous offenders who have
29 potential for rehabilitation with repeat offenders or
30 dangerous offenders. Medical, mental, and psychological
31 problems shall be diagnosed and treated whenever possible. The

1 Department of Children and Family Services and the Agency for
2 Persons with Disabilities shall cooperate to ensure the
3 delivery of services to persons under the custody or
4 supervision of the department. When it is the intent of the
5 department to transfer a mentally ill or retarded prisoner to
6 the Department of Children and Family Services or the Agency
7 for Persons with Disabilities, an involuntary commitment
8 hearing shall be held according to the provisions of chapter
9 393 or chapter 394.

10 (3) There shall be other correctional facilities,
11 including detention facilities of varying levels of security,
12 work-release facilities, and community correctional
13 facilities, halfway houses, and other approved community
14 residential and nonresidential facilities and programs;
15 however, no adult correctional facility may be established by
16 changing the use and purpose of any mental health facility or
17 mental health institution under the jurisdiction of any state
18 agency or department without authorization in the General
19 Appropriation Act or other approval by the Legislature. ~~Any~~
20 ~~facility the purpose and use of which was changed subsequent~~
21 ~~to January 1, 1975, shall be returned to its original use and~~
22 ~~purpose by July 1, 1977. However, the G. Pierce Wood Memorial~~
23 ~~Hospital located at Arcadia, DeSoto County, may not be~~
24 ~~converted into a correctional facility as long as such~~
25 ~~hospital is in use as a state mental health hospital. Any~~
26 community residential facility may be deemed a part of the
27 state correctional system for purposes of maintaining custody
28 of offenders, and for this purpose the department may contract
29 for and purchase the services of such facilities.

30 Section 54. Section 947.185, Florida Statutes, is
31 amended to read:

1 947.185 Application for mental retardation services as
2 condition of parole.--The Parole Commission may require as a
3 condition of parole that any inmate who has been diagnosed as
4 mentally retarded as defined in s. 393.063 shall, upon
5 release, apply for ~~retardation~~ services from the Agency for
6 Persons with Disabilities ~~Department of Children and Family~~
7 ~~Services~~.

8 Section 55. Subsection (3) of section 984.19, Florida
9 Statutes, is amended to read:

10 984.19 Medical screening and treatment of child;
11 examination of parent, guardian, or person requesting
12 custody.--

13 (3) A judge may order that a child alleged to be or
14 adjudicated a child in need of services be examined by a
15 licensed health care professional. The judge may also order
16 such child to be evaluated by a psychiatrist or a
17 psychologist, by a district school board educational needs
18 assessment team, or, if a developmental disability is
19 suspected or alleged, by a ~~the~~ developmental disability
20 diagnostic and evaluation team with ~~of~~ the Agency for Persons
21 with Disabilities ~~Department of Children and Family Services~~.
22 The judge may order a family assessment if that assessment was
23 not completed at an earlier time. If it is necessary to place
24 a child in a residential facility for such evaluation, then
25 the criteria and procedure established in s. 394.463(2) or
26 chapter 393 shall be used, whichever is applicable. The
27 educational needs assessment provided by the district school
28 board educational needs assessment team shall include, but not
29 be limited to, reports of intelligence and achievement tests,
30 screening for learning disabilities and other handicaps, and
31

1 screening for the need for alternative education pursuant to
2 s. 1003.53.

3 Section 56. Subsection (8) of section 984.225, Florida
4 Statutes, is amended to read:

5 984.225 Powers of disposition; placement in a
6 staff-secure shelter.--

7 (8) If the child requires residential mental health
8 treatment or residential care for a developmental disability,
9 the court shall refer the child to the Department of Children
10 and Family Services or the Agency for Persons with
11 Disabilities, as appropriate, for the provision of necessary
12 services.

13 Section 57. Paragraph (e) of subsection (5) of section
14 984.226, Florida Statutes, is amended to read:

15 984.226 Physically secure setting.--

16 (5)

17 (e) If the child requires residential mental health
18 treatment or residential care for a developmental disability,
19 the court shall refer the child to the Department of Children
20 and Family Services or the Agency for Persons with
21 Disabilities, as appropriate, for the provision of necessary
22 services.

23 Section 58. Subsection (1) of section 985.224, Florida
24 Statutes, is amended to read:

25 985.224 Medical, psychiatric, psychological, substance
26 abuse, and educational examination and treatment.--

27 (1) After a detention petition or a petition for
28 delinquency has been filed, the court may order the child
29 named in the petition to be examined by a physician. The court
30 may also order the child to be evaluated by a psychiatrist or
31 a psychologist, by a district school board educational needs

1 assessment team, or, if a developmental disability is
2 suspected or alleged, by ~~a the~~ developmental disabilities
3 diagnostic and evaluation team ~~with of~~ the Agency for Persons
4 with Disabilities ~~Department of Children and Family Services~~.

5 If it is necessary to place a child in a residential facility
6 for such evaluation, the criteria and procedures established
7 in chapter 393, chapter 394, or chapter 397, whichever is
8 applicable, shall be used.

9 Section 59. Section 1003.58, Florida Statutes, is
10 amended to read:

11 1003.58 Students in residential care facilities.--Each
12 district school board shall provide educational programs
13 according to rules of the State Board of Education to students
14 who reside in residential care facilities operated by the
15 Department of Children and Family Services or the Agency for
16 Persons with Disabilities.

17 (1) The district school board shall not be charged any
18 rent, maintenance, utilities, or overhead on such facilities.
19 Maintenance, repairs, and remodeling of existing facilities
20 shall be provided by the Department of Children and Family
21 Services or the Agency for Persons with Disabilities, as
22 appropriate.

23 (2) If additional facilities are required, the
24 district school board and the Department of Children and
25 Family Services or the Agency for Persons with Disabilities,
26 as appropriate, shall agree on the appropriate site based on
27 the instructional needs of the students. When the most
28 appropriate site for instruction is on district school board
29 property, a special capital outlay request shall be made by
30 the commissioner in accordance with s. 1013.60. When the most
31 appropriate site is on state property, state capital outlay

1 funds shall be requested by the department or agency in
2 accordance with chapter 216 ~~of Children and Family Services as~~
3 ~~provided by s. 216.043 and shall be submitted as specified by~~
4 ~~s. 216.023~~. Any instructional facility to be built on state
5 property shall have educational specifications jointly
6 developed by the school district and the department or agency
7 ~~of Children and Family Services~~ and approved by the Department
8 of Education. The size of space and occupant design capacity
9 criteria as provided by state board rules shall be used for
10 remodeling or new construction whether facilities are provided
11 on state property or district school board property. The
12 planning of such additional facilities shall incorporate
13 current state Department of Children and Family Services
14 deinstitutionalization goals and plans.

15 (3) The district school board shall have full and
16 complete authority in the matter of the assignment and
17 placement of such students in educational programs. The parent
18 of an exceptional student shall have the same due process
19 rights as are provided under s. 1003.57(5).

20 (4) The district school board shall have a written
21 agreement with the Department of Children and Family Services
22 and the Agency for Persons with Disabilities outlining the
23 respective duties and responsibilities of each party.

24
25 Notwithstanding the provisions herein, the educational program
26 at the Marianna Sunland Center in Jackson County shall be
27 operated by the Department of Education, either directly or
28 through grants or contractual agreements with other public or
29 duly accredited educational agencies approved by the
30 Department of Education.

31 Section 60. This act shall take effect July 1, 2006.

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SENATE SUMMARY

Revises various provisions relating to the Agency for Persons with Disabilities. Conforms statutory provisions to reflect the transfer of duties from the Developmental Disabilities Program Office within the Department of Children and Family Services to the Agency for Persons with Disabilities. Provides the agency with additional rulemaking authority. Authorizes an employee of the agency to own, operate, or work in a private facility that is under contract with the agency in specified circumstances. Establishes the Community Resources Development Loan Program for the purpose of providing loans to foster homes, group homes, and supported employment programs. Provides for a comprehensive transition education program for persons who have severe or moderate maladaptive behaviors. Specifies the components of the program. (See bill for details.)